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May 17, 2018

VIA ECFS

Marlene Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***In re Iowa Network Access Division Tariff F.C.C. No. 1***
WC Docket No. 18-60; Transmittal No. 36

Dear Ms. Dortch:

On behalf of Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"), transmitted herewith for filing in the above-referenced proceeding is a copy of the Public version of Aureon's Rebuttal to the Oppositions of AT&T Services, Inc. and Sprint Communications Company, L.P. On March 26, 2018, the FCC entered a Protective Order covering confidential materials submitted in this proceeding. Pursuant to the terms of the Protective Order, Aureon has designated certain information in its filing as Confidential, and all confidential information has been redacted in this filing. A Confidential version of the foregoing filing is being submitted contemporaneously via the Secretary's Office as required by the Protective Order.

Should there be any questions with respect to this submission, please contact the undersigned.

Respectfully submitted,

/s/ James U. Troup

James U. Troup
Tony S. Lee

Counsel for Iowa Network Services, Inc.
d/b/a Aureon Network Services

REDACTED - FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	WC Docket No. 18-60
	)	
Iowa Network Access Division Tariff	)	Transmittal No. 36
F.C.C. No. 1	)	

CONSOLIDATED REBUTTAL OF IOWA NETWORK ACCESS DIVISION D/B/A AUREON NETWORK SERVICES

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Dated: May 17, 2018

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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	WC Docket No. 18-60
	)	
Iowa Network Access Division Tariff F.C.C. No. 1	)	Transmittal No. 36
	)	

CONSOLIDATED REBUTTAL OF IOWA NETWORK ACCESS DIVISION D/B/A AUREON NETWORK SERVICES

Iowa Network Access Division d/b/a Aureon Network Services ("Aureon") hereby files its Consolidated Rebuttal in response to the Oppositions of AT&T Services, Inc. ("AT&T") and Sprint Communications Company L.P. ("Sprint"), pursuant to the April 19, 2018 Order Designating Issues for Investigation ("*Designation Order*"),[1] issued by the Federal Communications Commission ("FCC," or the "Commission").

I. INTRODUCTION

As discussed in Aureon's Direct Case, centralized equal access ("CEA") service was established to concentrate long distance traffic at a central point of interconnection (Des Moines) to enable small interexchange carriers ("IXCs") to connect at that location to compete against AT&T's monopoly long distance service in Iowa.[2] Aureon's CEA network has brought to rural Iowa a competitive choice of long distance services, and advanced telecommunications services and new technologies.[3] The benefits of a strong and robust CEA network in Iowa are clear:

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[1] *See generally Iowa Network Access Division Tariff F.C.C. No. 1*, Order Designating Issues for Investigation, WC Docket No. 18-60, Transmittal No. 36, DA 18-395 (WCB rel. Apr. 19, 2018) ("*Designation Order*").

[2] Direct Case of Iowa Network Access Division d/b/a Aureon Network Servs., WC Dkt. No., 18-60, at 1 (May 3, 2018) ("Direct Case").

[3] *Id.* at 1, 15-16.

through Aureon's fiber network, customers located in underserved rural areas in Iowa not only have the ability to receive long distance service from other carriers, but they also enjoy access to advanced services that their urban counterparts take for granted, such as high speed Internet access and digital television programming.

Aureon's CEA service is a unique service. There is no other carrier, including CenturyLink, that has a network that can provide the same traffic concentration capabilities that Aureon's CEA network does to enable IXCs to interconnect at a single point of interconnection for transport of their traffic to and from the exchanges of all of the more than 200 local exchange carriers ("LECs") that subtend the CEA network with equal access (1+dialing).[4] CEA service in Iowa is at a critical juncture and under siege by AT&T and other IXCs that refuse to compensate Aureon for their use of the CEA network.[5] Specifically, those IXCs seek to undermine the viability of CEA service and the CEA network through the instant tariff investigation proceeding by urging the Commission to set a CEA rate that will not enable Aureon to receive sufficient revenues to:

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[4] Frank Hilton Supplemental Declaration ¶ 3 ("Hilton Supplemental Declaration"), attached hereto as **Exhibit E**. AT&T argues that CenturyLink's network is comparable to Aureon's, and CenturyLink's rates using only 22 miles of transport should be the applicable CLEC rate benchmark. AT&T's argument is meritless because CenturyLink's network does not have traffic concentration capabilities to enable IXCs to connect at one location. *Id.* ¶ 4. Further, even if CenturyLink's network could reach all of the subtending LECs, which it could not, AT&T's CLEC rate benchmark calculation using 22 miles of transport does not factor in additional costs that IXCs would have to incur to construct expensive facilities or to pay other carriers for transport to reach CenturyLink's tandems located in disparate locations throughout Iowa. *Id.* IXCs avoid those additional costs associated with CenturyLink's service, which were omitted by AT&T, by sending traffic to a single point of interconnection on the CEA network. *Id.*

[5] As the Commission is aware, Sprint has exited the wireline long distance business. Sprint's only interest in this proceeding is due to Sprint's failure to pay Aureon's past invoices for CEA service. Aureon has been attempting to collect unpaid amounts from Sprint since 2009, and Aureon's lawsuit against Sprint remains pending before the U.S. District Court for the Southern District of Iowa. No trial date has been set by the Court. *See Iowa Network Servs., Inc. v. Sprint Comm'cns Co., L.P.*, No. 4:10-v-00102-JEG-RAW (S.D. Iowa Mar. 11, 2010).

(1) maintain its network;

(2) embark on sorely needed facility improvement projects that would in the long run, lower costs for all IXCs that use CEA service; and

(3) further expand and improve service for residents in rural areas.

The CEA network was not established for the benefit of AT&T. Rather, it was constructed to, among other things, bring long distance competition to rural areas. CenturyLink (then Northwestern Bell Telephone Company ("NWB")) unsuccessfully argued that IXCs should be able to deliver traffic via CenturyLink's tandems rather than the CEA network because CEA service would be more costly in some cases.[6] The Commission rejected NWB's view, ruling that:

> INAD's network appears to constitute a reasonable means of providing equal access in rural Iowa, and appears to be the only proposal likely to provide equal access services capable of reaching all INAD telephone subscribers. INAD's plan, of course, will generate additional costs, but on the whole we find it will serve the public convenience and necessity, given the alternatives before us.[7]

There is only one logical endgame for AT&T's efforts to persuade the FCC to set a CEA rate that is below Aureon's costs: the shutdown of the CEA network and the reestablishment of the AT&T long distance monopoly in rural Iowa. If Aureon is unable to charge a cost-supported CEA rate that will enable the company to maintain its operations, let alone upgrade its aging infrastructure and continue its core mission of bringing a competitive choice of long distance

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[6] Northwestern Bell Telephone Company ("NWB," now CenturyLink) proposed allowing IXCs to connect to subtending LECs through NWB tandems because they would be "less costly than INAD's [Aureon's] arrangement." The Commission rejected that proposal because all traffic to and from the subtending LECs would need to be routed through the CEA network to make the service viable. *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's Rules and Regulations To Lease Transmission Facilities To Provide Access Service to Interexchange Carriers in the State of Iowa*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd. 1468, 1470, ¶ 12 (1988) ("*FCC 214 Order*").

[7] *Id.* at 1471, ¶ 23 (emphasis added).

carriers and advanced telecommunications services to rural customers in Iowa, the adverse impact on those customers resulting from the discontinuance of CEA service would be severe, and, for many communities, catastrophic.

The discontinuance of CEA service by Aureon would negatively impact more than **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** rural customers in Iowa.[8] Specifically, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** customers would suffer the complete loss of long distance/toll calling service, and an additional **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** would also be negatively impacted by the loss of the CEA network.[9] Approximately **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** rural communities would be completely isolated from the rest of the nation because without CEA service, no IXCs would be able to reach those communities even through CenturyLink's network.[10] Another **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** communities in Iowa similarly would be isolated from the national public switched telephone network, and residents living in those areas would only be able to place local calls to other nearby communities through extended area service arrangements.[11]

When the FCC adopted rules implementing reforms to the federal universal service fund mechanism and adopting rate parity rules for competitive LECs ("CLECs"), the Commission did so "to encourage broadband deployment through the use of 'price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other

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[8] Direct Case at 2.

[9] *Id.*

[10] *Id.* at 3.

[11] *Id.*

regulating methods that remove barriers to infrastructure investment.'"[12] To advance the Commission's goal of encouraging broadband deployment, especially in rural areas, as further detailed in Aureon's Direct Case, the Commission should permit Aureon to bill tariff rates equal to or less than its default transitional rate of $0.00819. Such an arrangement would be similar to the regulatory regime for price-cap carriers, pursuant to which such carriers "have increased incentive and opportunity to develop and introduce new services; to invest in new technology . . . that will promote cost savings and efficiencies; to innovate; and to upgrade their networks."[13] Aureon could use the cost savings and efficiencies gained by its ability to bill a CEA rate equal to or less than its default transitional rate to invest in its network to increase broadband deployment in rural areas and to bring advanced services and technologies to those areas.

Under a default transitional rate "price-cap" regulatory regime, Aureon's CEA rate would be constrained by market forces because many of Aureon's subtending LECs provide long distance service for which they must pay for CEA service. There is strong incentive for Aureon to increase efficiencies and reduce its costs so that Aureon's LEC owners in the long distance business will be able to offer a competitive product to their rural customers. If the cost of Aureon's CEA service is too high, the corresponding long distance rates for those LECs will not be competitive with offerings from nationwide long distance carriers that are able to offset the costs of serving rural areas with the savings from serving low cost urban areas. Further, as Aureon is permitted to invest additional resources into expanding and improving its network to

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[12] *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, 17689, ¶ 70 (2011) ("*USF/ICC Transformation Order*").

[13] *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd. 6786, 6827, ¶ 335 (1990).

provide more advanced services and technologies, the LECs subtending the CEA network will also be able to offer new and modern services to rural areas provided through Aureon's augmented and upgraded fiber network. These results can be achieved by allowing Aureon to charge a CEA rate between the CLEC rate benchmark (as a floor) and the default transitional rate (as a ceiling).

II. ARGUMENT

A. AT&T Ignores the Key Operative Definition of, and Policy Behind, a "Rural CLEC," Which Confirm that Aureon Is, Indeed, a Rural CLEC that May Benchmark to the NECA Rates.

AT&T ignores the operative regulatory language confirming that – to the extent that Aureon is deemed a CLEC at all, which Aureon continues to dispute – Aureon meets the definition of a "Rural CLEC." Aureon also explicitly furthers the policy underlying the rural exemption found in 47 C.F.R. § 61.26(e), as both the FCC and the IUB explicitly recognized in authorizing Aureon's CEA service despite AT&T's and Sprint's far-fetched hypotheticals to suggest otherwise. Thus, Aureon qualifies as a "Rural CLEC" and is entitled to benchmark to the NECA rates.

1. Aureon Qualifies as a "Rural CLEC" Under the Textual Definition of that Term.

While both AT&T and Sprint spill ink discussing ancillary language, they all but ignore the definition itself. That definition provides that a "Rural CLEC is "a CLEC that does not serve (*i.e.*, terminate traffic to or originate traffic from) any end users located within" certain specified non-rural areas.[14] The definition makes crystal clear that to "serve" end users means to

[14] 47 C.F.R. § 61.26(a)(6) (emphasis added).

"terminate traffic to or originate traffic from" those end users.[15] It is beyond dispute that CEA service does not "terminate traffic to or originate traffic from" any end users at all, including any end users located within non-rural areas, and thus does not "serve" end users – a point that even AT&T and Sprint do not dispute.[16] Rather, Aureon is an intermediate carrier providing CEA service that routes traffic between IXCs and LECs, and those IXCs and LECs do serve end users. Therefore, Aureon explicitly comes within the scope of the definition.

Moreover, the very provision upon which AT&T and Sprint rely to argue that the rural exemption does not apply to Aureon confirms that Aureon does not "serve" end users and thus satisfies the "Rural CLEC" definition. While AT&T and Sprint invoke a provision generally addressing intermediate carriers that appears in the same rule as the "Rural CLEC" definition,[17] that provision actually makes clear that intermediate carriers do not "serve" end users. Specifically, the provision addresses a CLEC that "provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC."[18] In other words, the provision recognizes that merely acting as an intermediate carrier in the call path for calls ultimately sent to and from end users does not amount to "serving" those end users. Rather, it is the carriers who provide originating and terminating service to those end users – not intermediate carriers – that "serve" those end users.

The FCC's *Eighth Report and Order* confirms that "serving end users" means to provide terminating or originating service to those users, which CEA service does not do. In that Order,

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[15] AT&T incorrectly claims that the FCC's "rural CLEC" definition "does not specify what 'serve' means." AT&T Opposition at 40. That claim is belied by the definition itself.

[16] *See* AT&T Opposition at 38 (acknowledging that Aureon "serve[s] no end users"); *see also* Sprint Opposition at 7-9.

[17] AT&T Opposition at 37; Sprint Opposition at 7.

[18] 47 C.F.R. § 61.26(f) (emphasis added).

the FCC explicitly described "competitive LECs [that] act as intermediate carriers" as LECs that are "not serving the end-user."[19] That Order shows that the FCC did not believe that intermediate carriers "served" end users.

AT&T asserts that because a small portion of calls for which Aureon provides intermediate CEA service originate or terminate in non-rural areas, Aureon does not qualify as a "Rural CLEC."[20] But that is not what the definition says. Rather, it provides that only CLECs who "serve" end users in specified non-rural areas are excluded from the definition's scope.[21] As described above, CEA service does not serve such end users. Therefore, AT&T's claim is without merit.

Further, if AT&T's interpretation were correct, no CLEC that provides intermediate access service in addition to originating and terminating service would ever qualify as a Rural CLEC, which would contravene the language and purpose of the rural exemption. Even if such a CLEC's end users were located exclusively in rural areas, at least some incoming calls to those end users inevitably would come from non-rural areas, and those end users inevitably would place calls to non-rural areas. Under AT&T's reading, these CLECs could not qualify as Rural CLECs because they provide intermediate service to at least some calls that originate or terminate (albeit by another carrier) in non-rural areas. That reading is inconsistent with the definition, which requires only that a Rural CLEC not "serve" end users in non-rural areas.

Yet another problem with AT&T's reading of the "Rural CLEC" definition is that it attempts to have it both ways. On one hand, it supports defining "CLECs" also to encompass

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[19] *See Access Charge Reform*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd. 9108, 9116-17, ¶ 17 (2004) ("*Eighth Report and Order*").

[20] AT&T Opposition at 40.

[21] *See* 47 C.F.R. § 61.26(a)(6).

carriers subject to dominant carrier regulation and that do not serve any end users based on a rigid, literal reading of regulatory text but ignoring years of policy behind why CLECs were created and how they were regulated as non-dominant in the first place – *i.e.*, to increase competition with incumbent LECs for local service to end users, without also burdening those CLECs with onerous dominant carrier regulations.[22] On the other hand, AT&T argues that "Rural CLECs" should not encompass carriers that do not serve any end users, this time by largely ignoring the text of the definition, which nowhere mandates that Rural CLECs must serve any end users at all.[23] Either a "CLEC," whether rural or non-rural, should include carriers that serve end users, or it should not (Aureon's view remains the latter). It makes no sense to read language literally to include an intermediate carrier subject to dominant carrier regulation in the definition of a "CLEC" but at the same time to exclude that same carrier from the definition of a "Rural CLEC" based on that same ground.

Rather than focusing on the actual definition of a "Rural CLEC," AT&T instead points to language in the rural exemption found in 47 C.F.R. § 61.26(e) that provides that that exemption trumps subsections (b) through (d) in that same regulation but is silent regarding its hierarchy vis-à-vis the intermediate carrier provision found in subsection (f) of that same section.[24] AT&T argues from this silence that the rural exemption should be interpreted to be subject to subsection (f).[25] AT&T ignores, however, that the rural exemption also explicitly provides that it is subject

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[22] *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9939, ¶¶ 41-42 (2004) ("*CLEC Access Charge Reform Order*").

[23] AT&T Opposition at 36.

[24] *See id.* at 37-38 (arguing that rural CLEC exemption language in paragraph (e) providing that exemption applies "notwithstanding paragraphs (b) through (d) of this section" coupled with exemption's silence regarding the intermediate carrier provision found in paragraph (f) signifies that paragraph (f) trumps paragraph (e)).

[25] *Id.* at 37-38.

to another subsection of that regulation – subsection (g), addressing the rates applicable to CLECs engaged in access stimulation. The rural exemption could just as easily have specified that it is also subject to the subsection (f) intermediate carrier provision in addition to subsection (g), but it does not. Moreover, the intermediate carrier provision in subsection (f) easily could have provided that it trumps the subsection (e) rural exemption, but it does not. In short, there is nothing in the rural exemption or in the intermediate carrier provision (f) that provides that subsection (f) trumps subsection (e), and AT&T is wrong to argue otherwise.

2. Despite AT&T's Contrary Suggestion, Aureon's Status as a Rural CLEC Furthers the Purpose of the Rural Exemption.

AT&T suggests that recognition of Aureon as a Rural CLEC is inconsistent with the policy underlying the rural exemption,[26] but the opposite is true. Aureon is precisely the type of rural carrier for which the rural exemption was crafted, as both the FCC and the Iowa Utilities Board ("IUB") have recognized.

When the IUB first considered whether to permit INS to build its network and provide CEA service, it specifically found "that by concentrating toll traffic INS will provide tangible benefits to the rural local exchange companies and their customers" as well as "to the interexchange carriers who choose to serve them; and to the general public in this state."[27] It stated "that the concentration of traffic by INS is a service of substantial value to rural Iowa" and held that "[i]t is reasonable to allow INS to record the costs of the network necessary to provide that concentration."[28]

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[26] *See* AT&T Opposition at 41.

[27] *Iowa Network Access Division*, Order Granting Rehearing for the Limited Purpose of Modification and Clarification and Denying Intervention, Docket No. RPU-88-2, 1988 Iowa PUC Lexis 1, slip op. at 14 (IUB Dec. 7, 1988) ("*IUB Order*") (emphasis added).

[28] *Id.*

Importantly, the IUB recognized an additional benefit to rural end users that Aureon's CEA network would provide – the increased availability of information services. Specifically, the IUB found that "[t]he concentration is also beneficial to the rural end-users who receive equal access and gain the capability of obtaining modern information services as these become available."[29] It further observed that:

> the concentration will benefit the general public in Iowa by assuring that a substantial portion of rural Iowa will have a network in place to deliver information services. . . . A network such as the one to be provided by INS provides the means to assure timely access to information services in rural Iowa. Without such timely access, the development in rural areas could be impeded.[30]

The FCC similarly described the IUB's view of the benefits to rural communities that Aureon's contemplated CEA service would provide in its own decision authorizing the construction of Aureon's network:

> [IUB] adds that currently only 17.5% of all exchanges in Iowa receive originating inter-LATA toll service from a non-dominant interexchange carrier, *i.e.*, a carrier other than AT&T. AT&T's competitors are concentrating their services in the state's larger exchanges, which together account for about 60% of the state's access lines. [IUB] believes that INAD's proposal to aggregate rural traffic through a central point should be attractive to non-dominant IXCs and should encourage IXC competition in rural Iowa.[31]

The FCC did not merely recite the IUB's view regarding the benefits to rural communities that Aureon's network would provide; it independently recognized those benefits and their importance when it decided to permit Aureon to build its CEA network. Specifically, it observed that the core founding objective of Aureon was to benefit rural communities, observing

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[29] *Id.* at *16.

[30] *Id.* at *16-17 (emphasis added).

[31] *FCC 214 Order*, 3 FCC Rcd. at 1469-70, ¶ 11; *see also id.* at 1472-73, ¶ 31 ("ISUB states [t]he proposed concentration of traffic and access tandem arrangement should bring benefits of interLATA competition . . . to more of the rural areas of Iowa." (internal citation omitted)).

that INS's proposal to build a CEA network was to provide "a solution to the problem of how to achieve competition in long distance services in small rural communities."[32] The Commission made clear that "[t]he goal of the INAD system is one this Commission considers an important priority – to speed the availability of high quality, varied competitive services to small towns and rural areas."[33] The Commission found that:

> If the project attracts IXCs who compete with AT&T in providing services from these exchanges, rural areas of Iowa should benefit from INAD's plan in that competition among IXCs would be fostered, with IXC choice available for the first time to thousands of ITC subscribers.[34]

The Commission also recognized the uniqueness of Aureon's contemplated CEA network, observing that no other carrier could provide the same benefits as could Aureon's proposal:

> Considering all the circumstances of this case, INAD's network appears to constitute a reasonable means of providing equal access in rural Iowa, and appears to be the only proposal likely to provide equal access services capable of reaching all INAD telephone subscribers.[35]

Importantly, the FCC made this observation even though CenturyLink's predecessor, NWB, had questioned the unique benefits of CEA service and challenged the cost of Aureon's proposal.[36] The Commission even specifically acknowledged the increased costs of Aureon's proposal but

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[32] *Id.* at 1468, ¶ 3.

[33] *Id.* at 1468, ¶ 4.

[34] *Id.* at 1471, ¶ 21.

[35] *Id.* at 1471, ¶ 23.

[36] *FCC 214 Order*, 3 FCC Rcd. at 1470, ¶ 12 (observing that NWB "challenges the assertion that access traffic must be aggregated at a centralized location to attract multiple IXCs" and argues that Aureon's proposal is costly).

specifically found that the great benefits of Aureon's proposed CEA service outweighed those added costs.[37]

In light of Aureon's core purposes of providing enhanced telephone service to rural communities, increasing competition among long distance carriers in those communities, and enabling improved information services to reach rural communities – purposes that have been recognized by the very governmental bodies that approved the creation of Aureon's network – there can be no reasonable dispute that Aureon's CEA network is exactly the type of entity that the rural exemption was designed to protect. This holds particularly true when one considers that any savings achieved by Aureon can be reinvested to enhance further the provision of broadband service to rural Iowa.

While AT&T and Sprint both rely on *AT&T Services Inc. v. Great Lakes Comnet, Inc.*[38] for the proposition that the FCC has already decided that Aureon is not a Rural CLEC,[39] that reliance is misplaced. The D.C. Circuit did not accept the FCC's argument "that intermediate carriers may not qualify for the rural exemption under any circumstances," finding that it was an improper *post hoc* rationalization of counsel, and instead remanded that issue to the FCC for further consideration.[40] The case settled before the FCC decided the issue. In any event, the position that intermediate carriers cannot ever qualify as rural CLECs – no matter how valuable their service is to rural communities – is irreconcilable with the text of the Rural CLEC definition, which nowhere contains any affirmative requirement that a CLEC serve end users to

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[37] *Id.* at 1471, ¶ 23. *See also id.* at 1471, ¶ 21; *supra* at 3, n.7.

[38] *AT&T Services Inc. v. Great Lakes Comnet, Inc.*, Memorandum Opinion and Order, 30 FCC Rcd. 2586 (2015), *remanded in part sub nom., Great Lakes Comnet, Inc. v. FCC*, 82 F.3d 998 (D.C. Cir. 2016).

[39] AT&T Opposition at 38; Sprint Opposition at 7-8.

[40] *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998, 1004 (D.C. Cir. 2016).

qualify for the exemption.[41] Further, this case is distinguishable on other grounds as explained *infra* in Section II.B.2.e.

AT&T also argues that interpreting the Rural CLEC definition as written to include Aureon would result in an overbroad application of the definition to intermediate carriers based in non-rural areas such as New York City,[42] but that argument is misplaced. Meeting the definition of a Rural CLEC still does not automatically qualify an intermediate carrier for the rural exemption. As explained *supra* in Section II.A.1, for purposes of the rural exemption, an intermediate carrier still would need to identify a non-rural ILEC with whom it competes based upon the location of the rural end users the intermediate carrier would be sending traffic to or from.[43] Whether the rural exemption applies to an intermediate carrier providing service exclusively with respect to end users in New York City – which would not align with the objective of the rural exemption – is not before the Commission and need not be decided here. What is before the Commission is whether the Rural CLEC definition should be applied as written to the wholly different circumstances at issue here. Aureon is the very type of entity that the rural exemption was intended to benefit – a provider of CEA services that incurs substantial

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[41] *See* 47 C.F.R. § 61.26(e).

[42] AT&T Opposition at 41.

[43] As Aureon has explained, the Commission's rules preclude one ILEC from being deemed the "competing ILEC" in another ILEC's service area. In this regard, CenturyLink could never, under a consistent application of the Commission's rules, be the competing ILEC for areas served by one of Aureon's subtending ILECs. If, somehow, CenturyLink were to be considered Aureon's sole competing ILEC for benchmarking purposes due to, as AT&T advances, a "similar network" test, then the rural exemption would apply to Aureon because CenturyLink also meets the definition of a "non-rural ILEC" for each rural area that is served by one of Aureon's subtending rural ILECs. In other words, Aureon would be "competing with a non-rural ILEC" in every rural exchange in Iowa where Aureon sends traffic to or from a rural end user.

costs to create a network specifically to enhance telecommunications and information services to rural communities.

While AT&T attempts to confine the rural exemption exclusively to benefit carriers with high loop costs,[44] the FCC referred to other costs as well[45] and specifically noted that Aureon would incur significant costs in building and operating its CEA network.[46] Thus, applying the rural exemption to Aureon not only faithfully accords with the definition of a "Rural CLEC" but also squarely furthers the policy behind the rural exemption. In other words, if any carrier should come within the scope of a "Rural CLEC," a rural CEA service provider like Aureon should, and AT&T's contrary argument is wrong.

AT&T also asserts that Aureon cannot argue that CenturyLink is not the "competing ILEC" for purposes of 47 C.F.R. § 61.26(f) but at the same time argue that Aureon is "competing with a non-rural ILEC" – namely, CenturyLink – for purposes of 47 C.F.R. § 61.26(e).[47] That argument is misplaced, as it ignores that these phrases are defined differently under the applicable rules.

"Competing ILEC" is defined very narrowly as "the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC."[48] "Non-rural ILEC," by

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[44] AT&T Opposition at 38.

[45] *See Eighth Report and Order*, 19 FCC Rcd. at 9123, ¶ 30 (observing that FCC adopted rural exemption in "recogni[tion] that rural competitive LECs experience higher costs, particularly loop costs, and may lack the lower cost urban operations that non-rural incumbent LECs use to subsidize rural operations").

[46] *FCC 214 Order*, 3 FCC Rcd. at 1471, ¶ 23; *see also id.* at 1471, ¶ 21.

[47] AT&T Opposition at 38-39.

[48] 47 C.F.R. § 61.26(a)(2).

contrast, is defined very broadly as "an incumbent local exchange carrier that is not a rural telephone company under 47 U.S.C. 153(44)."[49]

Aureon established in Section II.B of its Direct Case why CenturyLink is not the "Competing ILEC" in the areas served by Aureon's subtending ILECs. Namely, there can be only one "Competing ILEC" with respect to a particular area. Where there exists one ILEC – *i.e.*, one of Aureon's subtending ILECs – in a particular area, CenturyLink cannot also be an ILEC in that area.

At the same time, there is no question that CenturyLink is an ILEC that "is not a rural telephone company under 47 U.S.C. 153(44)."[50] Among other reasons, CenturyLink provides local telephone service to Des Moines residents, which disqualifies it from being "a rural telephone company" under 47 U.S.C. § 153(44).[51] If, as AT&T argues, the "similar network" test applies for determining the competing ILEC (thereby disregarding the definition of Competing ILEC in the rules and the Commission's conclusion that there can be only one competing ILEC with respect to the service area where an end user resides), then Aureon would be competing with a non-rural ILEC – CenturyLink – in every rural exchange in Iowa regardless of whether another ILEC operated in that exchange. Thus, there is no inconsistency between the application of these wholly separated definitions that apply to different provisions of Section 61.26.

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[49] *Id.* at § 61.26(a)(4).

[50] *Id.* at § 61.26(a)(4).

[51] *Compare* 47 U.S.C. § 153(44) (providing that "rural telephone company" cannot provide local telephone service to "any incorporated place of 10,000 inhabitants or more, or any part thereof"), *with Internet, Phone, and TV Offers in Des Moines, Iowa*, CENTURYLINK, http://www.centurylink.com/local/ia/des-moines.html) (last visited May 14, 2018) (promoting CenturyLink local telephone service to Des Moines, Iowa).

In short, Aureon squarely falls within the definition of a "Rural CLEC" and the intended purpose of the rural exemption, and AT&T's and Sprint's contrary arguments should be rejected.

B. Even Apart from the Rural Exemption, the CLEC Rate Benchmark Would Still Approach the NECA Rate Despite AT&T's and Sprint's Contrary Claims.

Even if the rural exemption did not apply to Aureon, the CLEC rate benchmark would still approach the NECA rate rather than CenturyLink's rates because CenturyLink cannot be the "Competing ILEC" for purposes of benchmarking Aureon's rates. It does not meet the definition of a "Competing ILEC" with respect to large portions of Aureon's service area, and the service it provides is materially different from Aureon's CEA service. AT&T's and Sprint's contrary claims that CenturyLink should be deemed the Competing ILEC are wrong.[52]

1. AT&T and Sprint Ignore the Definition of "Competing ILEC," Which Confirms that CenturyLink Cannot Be the Competing ILEC for Purposes of Sections 51.911(c) and 61.26(f) for the Vast Majority of Areas Served by the Subtending LECs.

As noted above, "Competing ILEC" is defined as "the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC."[53] Section 251(h), in turn, defines "ILEC" as "with respect to an area, the local exchange carrier that," *inter alia*, "on February 8, 1996, provided telephone exchange service in such area."[54] In other words, there can only be a single "Competing ILEC" with respect to a particular area where a CLEC provides interstate exchange access services. Tellingly, neither AT&T nor Sprint even attempt to grapple

[52] *See* AT&T Opposition at 23; Sprint Opposition at 10-12.

[53] 47 C.F.R. § 61.26(a)(2) (emphasis added).

[54] 47 U.S.C. § 251(h) (emphasis added).

with section 251(h), which disqualifies CenturyLink from being deemed the "competing ILEC" for the areas served by Aureon's subtending ILECs.

2. AT&T and Sprint Ignore the Material Differences Between Aureon's CEA Service and CenturyLink's Non-CEA Service.

a. AT&T Acknowledges that CenturyLink Must Offer the "Same Service" as Aureon To Qualify as the "Competing ILEC."

AT&T acknowledges, as it must, that the "Competing ILEC" benchmark rule in 47 C.F.R. § 61.26(f) requires that the rate benchmark be "for the same access services."[55] AT&T then attempts to equate CenturyLink's decentralized tandem service with Aureon's CEA service to fit within this criterion, claiming that they are "equivalent service[s]."[56] As shown below, however, not only are these services materially different, but the very reason why Aureon's network was approved in the first place was because the decentralized service operated by CenturyLink's predecessor was deemed inadequate to serve the communications needs of rural Iowa. Thus, CenturyLink's rates for its decentralized service cannot be an appropriate benchmark for Aureon's materially different CEA service even if CenturyLink were eligible to be deemed the "Competing ILEC."

b. CenturyLink's Decentralized Tandem Service Is Not the Same Service as Aureon's CEA Service.

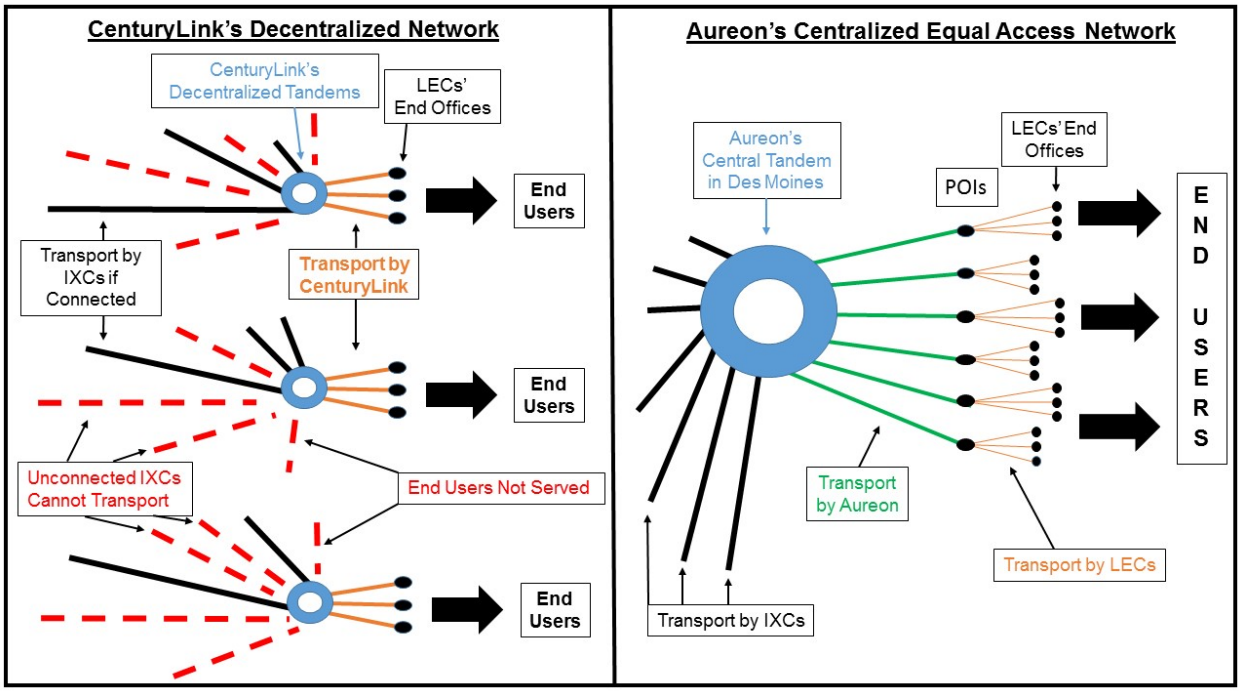
CenturyLink's decentralized service fundamentally differs from Aureon's centralized equal access service. Aureon's CEA service facilitates competition among IXCs by allowing them to connect to Aureon's network at any one of eight active POIs and thereby gain access to the networks of more than 200 LECs. For example, calls from IXCs connecting at Aureon's POI

[55] AT&T Opposition at 20 (quoting 47 C.F.R. § 61.26(f)).

[56] *Id.* at 31.

in Spencer, Iowa would be routed to Aureon's central tandem in Des Moines, which in turn could ultimately be routed to the exchange areas of any one of more than 200 LECs connected to Aureon's network. Rather than having to build the infrastructure to connect to multiple individual tandem switches throughout Iowa like they would need to do to connect to CenturyLink's tandems, IXCs need only connect at a single POI on Aureon's network to gain access to Aureon's extensive network and all of its more than 200 subtending LECs.

CenturyLink's service, by contrast, does not include such functionality. Rather, calls from smaller IXCs connecting to CenturyLink's tandem switch in Spencer, for example, would only gain access to the LECs that are specifically connected to CenturyLink's tandem in Spencer. Those IXCs would not gain access to LECs connected to CenturyLink tandems located in other places throughout Iowa. The following diagram depicts the sharp differences between CenturyLink's decentralized network and Aureon's centralized equal access network:



In addition, Aureon's network offers redundant switches to minimize outages, and it is Aureon's understanding that CenturyLink's network does not have similar failsafe systems in place.[57]

In a decision affirming the IUB's approval of Aureon's network, the Iowa Supreme Court has described another difference between CEA service and CenturyLink's decentralized tandem service from the perspective of the end user:

> A specialized form of originating access service, known as "equal access," enables the caller to predesignate a given interexchange utility as their desired long-distance carrier. Under the equal-access system, this predesignated carrier is accessed merely by dialing one plus the area code plus the seven-digit number or just one plus the recipient's seven-digit number. In the absence of equal access, the caller has no choice as to the interexchange carrier when using "one-plus" dialing; all one-plus long-distance calls are automatically handled by a single interexchange carrier. In this latter situation, the only means of accessing an alternative interexchange carrier is by dialing a special, multidigit access code in addition to the desired seven or ten-digit number.[58]

AT&T attempts to gloss over these material differences by discussing how its own long distance service would be able to use CenturyLink's network to exchange call traffic with LECs because it "already has facilities in place that connect AT&T's long distance network to each of the Century Link tandem switches in or near Iowa, in order for AT&T to route traffic to and from CenturyLink end office switches and end users served by CenturyLink."[59] It further asserts that "[t]he same is presumably true of other major long distance carriers."[60] But Aureon was not created to benefit AT&T or other so-called "major" long distance carriers. Aureon was created to facilitate competition against AT&T from smaller IXCs that do not have the facilities or the

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[57] Hilton Supplemental Declaration ¶ 3.

[58] *Nw. Bell Tel. Co. v. Iowa Utils. Bd.*, 477 N.W.2d 678, 680-81 (Iowa 1991).

[59] AT&T Opposition at 24.

[60] *Id.*

resources to connect to numerous tandem switches by providing CEA services to those carriers that makes it more economical and efficient to offer long distance service to rural Iowa.

Moreover, the point of Aureon's network is not to enable AT&T to connect with CenturyLink's end users. It is to provide service to IXCs to enable them to route traffic to the more than 200 subtending LECs, which, in turn, route calls to the LECs' end users. AT&T and Sprint have not even attempted to demonstrate that these other smaller IXCs currently have, or have the necessary resources to establish, connections with each of CenturyLink's eight tandem switches in Iowa. Nor have they attempted to rebut Aureon's showing that telephone service in Iowa would be interrupted or severely disrupted for hundreds of thousands of Iowans if CenturyLink's network – instead of Aureon's – were used because numerous smaller IXCs would no longer be able to provide service in rural Iowa.[61]

c. Aureon's Network Was Built Precisely Because CenturyLink's Predecessor's Decentralized Tandem Service Was Deemed To Be Materially Different from – and Inferior to – Aureon's CEA Service.

The differences in functionality between Aureon's centralized equal access network and a decentralized network such as CenturyLink's are so significant that they constitute the very reason why federal and state governmental authorities authorized Aureon's network to be built in the first place. As described above, the IUB specifically referred to the CEA network's unique structure that facilitated the concentration of traffic at a central location as a reason for approving the construction of Aureon's network. Specifically, it found "that by concentrating toll traffic INS will provide tangible benefits to the rural local exchange companies and their customers"[62] and that "the concentration will benefit the general public in Iowa by assuring that a substantial

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[61] *See* Aureon Direct Case at Section II.E.4.

[62] *IUB Order*, 1988 Ia. PUC LEXIS 1, at *14 (emphasis added).

portion of rural Iowa will have a network in place to deliver information services."[63] The Commission also recognized the unique benefits that Aureon's proposed network would provide, calling it "the only proposal likely to provide equal access services capable of reaching all INAD telephone subscribers."[64] It recognized that the network of CenturyLink's predecessor was not working to achieve competition because the multiple decentralized tandems of CenturyLink's predecessor, NWB, did not make it cost-efficient for small IXCs to connect to rural Iowa.[65] It also observed that the objective of Aureon's centralized network "is one this Commission considers an important priority – to speed the availability of high quality, varied competitive services to small towns and rural areas."[66] Significantly, both the IUB and the FCC recognized that the important and unique benefits achieved by CEA service outweighed the increased costs of constructing and operating this network.[67]

The Iowa Supreme Court similarly has described a key reason why Aureon's network was constructed – the status quo gave CenturyLink's predecessor a monopoly over intraLATA toll service in Iowa, and the creation of CEA service would introduce competition into the related long distance service market:

> The INS system now in operation is designed to enable the [participating telephone companies] PTC's to offer their customers equal-access service accessing. Prior to the inception of INS's centralized accessing system, the PTC's had to rely on other relatively larger, local phone companies, such as NWB, to assist them in the provision of accessing services. Because the accessing services

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[63] *Id.* at *16-17.

[64] *FCC 214 Order*, 3 FCC Rcd. at 1471 ¶ 23.

[65] *See id.* at 1469-70, ¶¶ 11-12, and at 1471, ¶¶ 22-23.

[66] *Id.* at 1468, ¶ 4.

[67] *Id.* at 1471, ¶ 23 ("INAD's plan, of course, will generate additional costs, but on the whole we find it will serve the public convenience and necessity, given the alternatives before us."); *IUB Order*, 1988 Ia. PUC LEXIS 1, at *14 ("It is reasonable to allow INS to record the costs of the network necessary to provide that concentration.").

> were not of the equal-access type, the caller had no choice as to their interexchange carrier when making one-plus long-distance calls. Moreover, since NWB is an interexchange utility as well as a purveyor of access services, NWB enjoyed a de facto monopoly in the realm of one-plus, intra-LATA1 long-distance calling. Thus, the INS network will not only replace NWB as a purveyor of access services with respect to the PTC's, but it will introduce a measure of competition into the one-plus, intra-LATA long-distance market."[68]

As the Court observed, "[t]he INS network is designed to foster competition among interexchange carriers in the one-plus long-distance market by making it economically feasible for long-distance carriers to absorb the costs of the more sophisticated, equal-access switching system."[69]

AT&T and Sprint, however, attempt to sweep under the rug all of this history and the unique benefits provided by CEA service by claiming that Aureon's rates should be benchmarked to the rates charged by CenturyLink for its very different service, which was deemed inferior and inadequate by multiple governmental authorities, including the FCC.[70] AT&T, for example, asserts that "CenturyLink has a network capable of providing the same tandem and transport services as Aureon."[71] But rather than explain how CenturyLink's network offers service comparable to CEA service, AT&T ignores the crucial CEA aspect of Aureon's service altogether and instead describes CenturyLink's decentralized tandem switches.[72] CenturyLink's decentralized service is no substitute for Aureon's network – CenturyLink simply cannot provide CEA service at its tandems. If IXCs were forced to rely on CenturyLink's service in lieu of Aureon's, many IXCs would immediately lose the ability to provide long distance service to their customers in Iowa, interrupting or severely disrupting

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[68] *Nw. Bell Tel. Co.*, 477 N.W.2d at 681.

[69] *Id.*

[70] AT&T Opposition at 23-25; Sprint Opposition at 10-12.

[71] AT&T Opposition at 23.

[72] *Id.*

telecommunications service for hundreds of thousands of Iowans. Moreover, if CenturyLink were truly offering the "same service" as Aureon, Aureon's network would never have been built in the first place.

AT&T also claims that Aureon's rate should be lower than CenturyLink's rate,[73] but this claim again ignores the key differences between Aureon's CEA service and CenturyLink's decentralized tandem service and the raison d'être behind Aureon's service. As noted above, the FCC approved the construction of Aureon's extensive CEA service to increase long distance competition and to provide access to advanced, modern technologies and services in rural Iowa. Both the FCC and the IUB specifically recognized that there would be additional costs associated with constructing and operating this far more extensive centralized network, which, by definition, entails routing calls through Aureon's central tandem in Des Moines to provide access to Aureon's entire network. Both found that the benefits were worth these costs. Those findings have been borne out, as Iowa consumers have access to far more choices in long distance carriers than they did before Aureon's CEA service network was constructed.[74] The Commission should reject AT&T's and Sprint' attempts to rewrite history and erase the material differences between CEA service offered by Aureon through its centralized access tandem, and non-CEA service offered by CenturyLink through a decentralized network, which could not reach all of the subtending LECs in any event.

[73] *Id.* at 32.

[74] Direct Case at 17.

d. CenturyLink Would Need To Overhaul its Network at Great Expense To Provide CEA Service, Which Would Almost Assuredly Increase CenturyLink's Rates Dramatically To Cover the Cost of that Investment.

For CenturyLink to offer CEA service comparable to Aureon's, it would need to overhaul and reconfigure its network, which represents a huge investment of time and resources.[75] While AT&T and Sprint discuss CenturyLink's rates for its existing decentralized service, nowhere do they account for these very significant additional reconfiguration/buildout costs that CenturyLink would need to incur to provide CEA service, which would necessarily increase CenturyLink's rates dramatically and, in all likelihood, to levels that are substantially above Aureon's existing rates.[76]

Incredibly, AT&T even suggests that it would be appropriate to benchmark Aureon's rate to CenturyLink's rate for direct trunked transport service – the very antithesis of the advantageous CEA service offered by Aureon.[77] To achieve the traffic concentration that was the key objective for Aureon's existence, it is necessary for traffic to be routed on common trunks.[78] It makes no sense to consider direct trunk transport to benchmark the CEA rate, as that defeats the very purpose for which CEA service was approved in Iowa in the first instance. AT&T's assertion that rates for direct trunked transport service is at all relevant to Aureon's tariff should be rejected.

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[75] *See* Hilton Supplemental Declaration ¶¶ 2-4.

[76] *See* AT&T Opposition at 25-26; Sprint Opposition at 14.

[77] AT&T Opposition at 26, n.37. To implement equal access, the rural LECs would have had to upgrade their switches and facilities, and send traffic to each IXC on a separate trunk group, which would have been very costly for the rural LECs to implement. Aureon's CEA network uses common trunks, which obviated the need for those LECs to each invest the resources necessary route traffic to IXCs using direct trunks in order to implement equal access. Hilton Supplemental Declaration ¶ 12.

[78] Hilton Supplemental Declaration ¶ 12.

e. The *Great Lakes Comnet* Decision Cited by AT&T Shows that Aureon's Subtending ILECs, Not CenturyLink, Are the "Competing ILECs" in the Respective Areas that they Serve.

AT&T also relies on the Commission's decision in *AT&T Services Inc. v. Great Lakes Comnet, Inc.* in arguing that CenturyLink should be considered the "Competing ILEC" to Aureon.[79] That decision, however, actually supports Aureon's position that, if benchmarking is appropriate at all, each of Aureon's subtending ILECs constitute the "Competing ILEC" with respect to the area that each such ILEC serves.

Great Lakes Comnet involved an access stimulation/arbitrage scheme[80] whereby 8YY incoming wireless calls from across the country were aggregated and reoriginated from an end-office switch operated by LEC-MI in Southfield, Michigan.[81] From there, the traffic was routed to a tandem switch in Westphalia, Michigan operated by Great Lakes Comnet ("GLC"), which then "directed the traffic to AT&T for completion."[82] Pursuant to agreements, GLC shared some of the access charges it received from AT&T with one of the aggregators and with LEC-MI "in exchange for [the aggregator] and LEC-MI sending the traffic to GLC's tandem."[83] The Commission held, and the court affirmed, that GLC should have benchmarked its rates to the

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[79] *Id.* at 24-25, 34.

[80] Aureon's CEA service, which provides great connectivity benefits to rural Iowa, is nothing like the arbitrage scheme at issue in *Great Lakes Comnet*. Moreover, the Commission specifically found that Aureon was not engaged in access stimulation despite AT&T's contrary claims. *AT&T Corp. v. Iowa Network Services, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd. 9677, 9684, ¶ 17 (2017) ("*Liability Order*").

[81] *AT&T Services, Inc. v. Great Lakes Comnet, Inc.*, 30 FCC Rcd. at 2590.

[82] *Id.* at 2590.

[83] *Id.* at 2590.

relevant "Competing ILEC" and that that ILEC was AT&T Michigan – the ILEC operating in Southfield, Michigan from where the aggregated calls reoriginated.[84]

While AT&T claims that this decision shows that CenturyLink, not Aureon's subtending ILECs in their respective areas, should be deemed the "Competing ILEC" for benchmarking purposes, precisely the opposite is true. The court specifically affirmed the FCC's decision that the "Competing ILEC" was the ILEC operating in "the location where LEC-MI [the point of reorigination of the calls] handed off the 8YY traffic to Great Lakes," the intermediate carrier.[85] IXC. In Aureon's case, that ILEC is not Century Link but Aureon's subtending ILECs that operate in their respective areas and hand off calls to Aureon.[86]

AT&T asserts that *Great Lakes Comnet* indicates that Aureon's subtending ILECs should not be deemed the competing ILECs because the FCC in that case rejected a similar argument by GLC on the ground that that ILEC espoused by GLC as the "Competing ILEC" "could not provide any interLATA services, including interLATA transport."[87] AT&T ignores, however, that CenturyLink itself cannot provide interLATA transport services under its tariff, which authorizes those services only within CenturyLink's LATA.[88] Specifically, CenturyLink's tariff for switched access service – which "provides for the ability to originate calls from an end user's premises to a customer's premises, and to terminate calls from a customer's premises to an end

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[84] *Great Lakes Comnet*, 823 F.3d at 1004-05.

[85] *Id.*

[86] The actual points of origination could not have been used to determine the relevant "Competing ILECs" because the calls were placed from around the country and transported by wireless carriers, which are neither ILECs nor subject to tariff filing requirements.

[87] AT&T Opposition at 34.

[88] *See* CenturyLink Tariff F.C.C. No. 11, 1st Revised Page 6-1, attached hereto as **Exhibit H**.

user's premises" – explicitly applies only "in the LATA where it is provided."[89] Thus, far from supporting AT&T's position urging CenturyLink as the "Competing ILEC," AT&T's argument undermines it.[90]

In sum, it is Aureon's subtending ILECs, not CenturyLink, that are the relevant "Competing ILECs" to the extent that Aureon is subjected to a benchmarking analysis at all.

3. AT&T Is Wrong To Suggest that Aureon's Rate Would Be Driven Down Below NECA Rates due to Access Stimulation Traffic if Aureon Is Benchmarked to its Subtending ILEC.

AT&T also argues that even if Aureon's subtending ILECs are each deemed the "Competing ILEC" in their respective areas, Aureon's blended rate would still be far lower than the NECA rates because access stimulation traffic must be considered, which must be benchmarked to CenturyLink's rate under Section 61.26(g).[91] AT&T's argument is wrong.

By its terms, the benchmarking rule that AT&T cites only applies to "CLEC[s] engaged in access stimulation."[92] The Commission specifically found that Aureon was not engaged in access stimulation.[93] Moreover, under the "Competing ILEC" benchmarking analysis, only the

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[89] *Id.* (emphasis added).

[90] Sprint suggests that Aureon's subtending ILECs should not be the "Competing ILEC" in their respective areas because they have a small ownership interest in Aureon and cannot be said to compete with it. Sprint Opposition at 11-12. But those ILECs are separate corporate entities that maintain their own Boards of Directors and make independent management decisions. There is no basis to suggest that ownership by one company of a small, noncontrolling share of another *per se* defeats a claim that those companies may compete with each other. Indeed, in an informal complaint filed by CenturyLink regarding Aureon's 2013 tariff, CenturyLink acknowledged that each of Aureon's shareholders owned less than 5% of Aureon's voting shares, and no single LEC controls Aureon's operations. *See* Informal Complaint of CenturyLink, *CenturyLink Commc'ns, LLC v. Iowa Network Servs., Inc.*, File No. EB-14-MDIC-0007, at 2 n.6 (filed July 31, 2014).

[91] AT&T Opposition at 34-35.

[92] 47 C.F.R. § 61.26(g) (emphasis added).

[93] *Liability Order*, 32 FCC Rcd. at 9684, ¶ 17.

rates of ILECs – not CLECs – are considered in determining a blended rate.[94] It is Aureon's understanding that only CLECs – not ILECs – have been found to have engaged in access stimulation. Thus, access stimulation traffic carried by such CLECs is wholly irrelevant to determining the competing ILEC's rate for benchmarking Aureon's tariff rate, and AT&T's contrary argument should be rejected.

In sum, if Aureon remains subject to the "Competing ILEC" benchmarking rule, Aureon's subtending ILECs, not CenturyLink, are the relevant "Competing ILECs," and Aureon's rates would approach the NECA rates that apply to those subtending ILECs.

C. AT&T Is Wrong To Use the Mileage of a Non-Comparable Non-CEA Service in Benchmarking the Rate for Aureon's CEA Service, Which Was the very Service that Aureon Was Created To Provide.

Aureon demonstrated in its Direct Case that even if CenturyLink were deemed the "Competing ILEC," Aureon's rates are comparable to CenturyLink's once transport distance is taken into account.[95] AT&T, however, disputes this point, asserting that Aureon has used the wrong mileage in equating its non-distance-sensitive rate with CenturyLink's distance-sensitive rate and that 22 miles (or even lower distances), rather than 104 miles, is the correct distance.[96] AT&T's approach, however, suffers from three fatal flaws.

First, AT&T's 22-mile calculation relies on an assumption that flies in the face of the very reason for Aureon's existence. Specifically, AT&T asserts that the mileage calculation to derive a rate benchmark for Aureon's CEA service should be based on the existing non-CEA

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[94] *See* 47 C.F.R. § 61.26(f).

[95] Aureon's Direct Case at Section II.A.8.

[96] AT&T Opposition at 27.

network that CenturyLink currently operates.[97] As explained above, however, Aureon's CEA network was approved for construction precisely because of the centralized nature of Aureon's proposed network and the benefits that centralization would bring to Iowa. These benefits included greater consumer choice among long distance providers as they find it more economically feasible to enter Iowa, enhanced telecommunications service to rural Iowa, and a reliable infrastructure for providing information services to Iowans – benefits that the decentralized network of CenturyLink's predecessor had failed to bring. Moreover, both the FCC and the IUB found that while there would be higher costs resulting from constructing and operating a CEA network, the benefits of such centralized service outweighed those costs. CenturyLink's decentralized non-CEA service is simply not the "same service" as Aureon's CEA service network that the IUB and the FCC found so valuable in deciding to approve it. It therefore simply cannot serve as a benchmarking service for CEA service in its current form pursuant to 47 C.F.R. § 61.26(f), which requires that the benchmark rate be for "the same access services."[98]

To the extent that Aureon is subject to the "Competing ILEC" benchmarking rule at all, the benchmark must be to the service that Aureon was created to provide – CEA service. Transport distances for a CEA network necessarily would be significantly greater than for CenturyLink's network in order to route all traffic through a single central tandem switch – the key benefit animating Aureon's creation – rather than from routing traffic through a

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[97] *Id.*, Declaration of John W. Habiak ¶ 18 ("Habiak Declaration") **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**; AT&T Opposition at 27.

[98] *See* 47 C.F.R. § 61.26(f) (requiring that "Competing ILEC" rate benchmark be for "the same access services" as those of the CLEC subject to benchmarking).

decentralized, fragmented network such as CenturyLink's. AT&T is wrong in arguing otherwise.

Second, AT&T wrongly measures distances on a portion of transport facilities that CEA service does not even provide. Specifically, AT&T asserts that the relevant distances are "the mileage[s] between CenturyLink's tandem switches and the local exchanges of each of the subtending LECs to which AT&T delivered access traffic."[99] In other words, AT&T considers distances for the transport facilities provided by CenturyLink to be between a CenturyLink access tandem, which in the case of CenturyLink's network, is analogous to one of Aureon's POIs, and a LEC end office. Moreover, AT&T only considers the distance from CenturyLink's closest end office to a subtending LEC, and ignores the mileage associated with the transport to route traffic to seven remote tandems in Iowa.

Aureon, by contrast, calculated its mileage based on the CEA service that it actually provides – the average distance from its central tandem switch in Des Moines to each of its POIs across Iowa, where calls are transferred to subtending LECs for delivery to their end offices.[100] (Although traffic typically is also routed to the central Des Moines switch before being routed to its destination, Aureon conservatively did not include that distance in its calculation.) The following diagram illustrates the difference:

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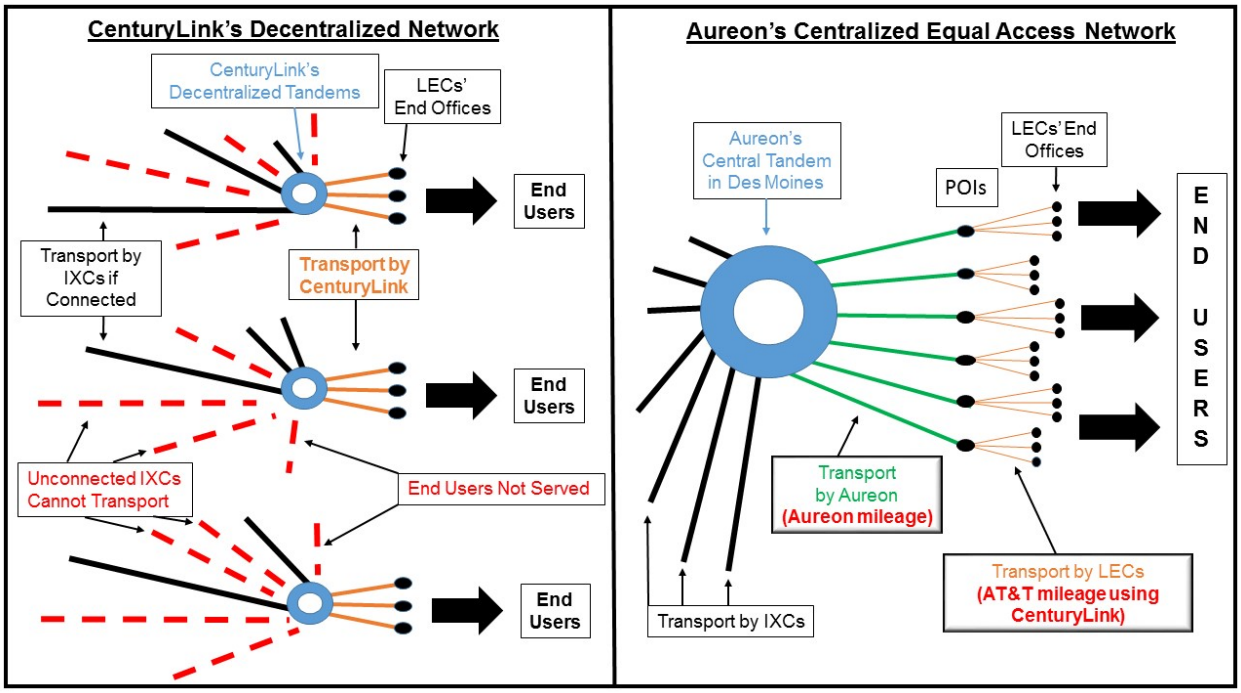
[99] AT&T Opposition at 27.

[100] *See* Aureon's Direct Case at Section II.A.8. The FCC ruled in *Alpine* that the POI where traffic is routed to the end office of a subtending LEC is where Aureon's service ends. *AT&T Corp. v. Alpine Communications, LLC*, Memorandum Opinion and Order, 27 FCC Rcd. 11511, 11520, ¶ 23 (2012) ("*Alpine*").



As the diagram shows, Aureon calculated mileage based on the green lines in the right half of the diagram, which represent Aureon's transport of traffic from its central tandem in Des Moines to its various POIs throughout Iowa, where that traffic is handed off to subtending LECs. AT&T, by contrast, selectively calculated mileage for only its own traffic based on the orange lines in the left half of the diagram, which represent the distance between CenturyLink's decentralized tandems throughout Iowa to the end offices of subtending LECs. The counterpart to AT&T's mileage calculation in the context of Aureon's network is represented by the orange lines on the right half of the diagram, which depict a segment of transport service that Aureon does not even provide.

It makes no sense to use transport distances between a point where Aureon's CEA service ceases to operate and the end offices of subtending LECs in calculating a benchmark for CEA service. Rather, the mileage should correspond to the service to which it actually applies. AT&T's different calculation is irrelevant and should be rejected.

Third, AT&T's calculations are self-serving and incomplete because they only account for AT&T's and CenturyLink's situations; nowhere do they factor in the plight of smaller IXCs. CenturyLink located its decentralized access tandems to benefit its own long distance service, not to make it easier for other IXCs to compete with it. While it may cost less for AT&T (a) to use CenturyLink's fragmented network given AT&T's prior ownership of CenturyLink's predecessor, NWB, and AT&T's pre-existing connections to CenturyLink's tandems and (b) to connect to CenturyLink's tandems to route traffic to CenturyLink's end users, this is not the case for smaller IXCs that are not connected to CenturyLink's tandems and do not have the resources or the infrastructure to do so. Many of these IXCs would be foreclosed from using CenturyLink's network at all if Aureon ceased to operate. It is far more economical for such IXCs to connect to a single point in Iowa – Aureon's centralized tandem switch in Des Moines – which then enables them to route traffic throughout Iowa using Aureon's extensive network.[101] Under these circumstances, it would be inequitable to use irrelevant CenturyLink mileage to calculate a rate for Aureon. To the extent that CenturyLink is deemed the "Competing ILEC" for purposes of calculating a benchmark rate for Aureon – which would be wrong for the reasons stated above and in Aureon's Direct Case – Aureon's mileage, rather than AT&T's, should control.

D. Sprint Is Wrong To Rely Solely on its own Intrastate POI-to-POI Traffic Data To Determine Aureon's Interstate Transport Miles for its CEA Service.

Sprint similarly argues that Aureon's mileage figure should be around 20 miles purportedly based on certain intrastate transport calculations for only its own traffic.[102] But

[101] AT&T itself admits that many such IXCs do, in fact, connect to Aureon's network in Des Moines. AT&T Opposition at 30, n.52.

[102] Sprint Opposition at 14-15.

Sprint's claim suffers from the same flaws of noncomparability that AT&T's does. Specifically, Sprint has used data for intrastate traffic rather than for the interstate traffic at issue here. Unlike the non-distance-sensitive interstate tariff, the Iowa intrastate tariff charges a separate mileage based rate that only applies when an IXC interconnects with the CEA network at any POI other than the POI where the LEC connects. Sprint avoided paying the mileage based intrastate transport rate by interconnecting at POIs other than Des Moines. For example, when Sprint interconnects at the POI in Davenport, Iowa for traffic originating from exchanges close to Davenport, Aureon must still transport the call to the central access tandem in Des Moines where the equal access functionality is located to determine the IXC selected by the caller, and if the presubscribed IXC is Sprint, Aureon must then transport the call back to Sprint at the POI in Davenport. In this example, Sprint is not charged a separate mileage based transport rate even though Aureon must transport the call far more than 20 miles. As such, the intrastate miles for which Sprint was billed a separate transport rate would not remotely represent the actual average transport miles over Aureon's CEA network centered in Des Moines.

Moreover, by Sprint's own admission, Sprint selectively relies only on its own data, without taking into account the many other IXCs using Aureon's network. Sprint is a large and well-connected carrier that has established interconnections with each of the original seven POIs in Aureon's network.[103] As such, Sprint's mileage figure for which it paid an intrastate transport rate – even if accurate and even if one assumes no material differences between intrastate and interstate traffic data – conceivably could approach zero if Sprint strategically routed all of its traffic via the POI closest to the exchange of the subtending LEC where the calling party or called party is located. A Sprint-specific calculation of when it has paid a mileage based

[103] Hilton Supplemental Declaration ¶ 6.

intrastate transport rate, however, fails to account for the many far less well-connected carriers in Iowa that do not have the numerous POI connection that Sprint does. Those smaller IXCs choose to connect at a single location in Des Moines, which required them to pay the mileage-based intrastate rate for more miles than paid by Sprint. For these reasons, Sprint's intrastate calculation based solely on its own data does not provide a reasonable basis for estimating transport miles for Aureon's interstate traffic over its Des Moines-based CEA network.

E. AT&T's and Sprint's Criticisms of Aureon's Cost and Demand Data Are Specious.

1. AT&T and Sprint Both Ignore the FCC's Affiliate Transaction Rules; Aureon Has Complied with Those Rules Because the Network Division Recovers Less Than the Network Division's Fully Distributed Costs.

As an initial matter, it is important to note that nowhere in AT&T's or Sprint's Oppositions do they discuss the FCC's affiliate transaction rules, which is the context in which the Network Division charges the Access Division for facilities to provide CEA service to IXCs. As discussed in the Direct Case, the FCC's *Fifth Report and Order* in the Competitive Common Carrier Services proceeding[104] prohibited Aureon's Access Division from jointly owning the transmission and switching facilities with Aureon's Network Division to protect against cost-shifting and anticompetitive conduct.[105] As required by the *Fifth Report and Order*, Aureon created separate corporate divisions which facilitated access services (*i.e.*, the Access Division), and competitive services (*i.e.*, the Network Division). Aureon's division of its CEA and

[104] *See generally Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Fifth Report and Order, 98 F.C.C.2d 1191 (1984) ("*Fifth Report and Order*").

[105] Direct Case at 33 (citing *Fifth Report and Order*, 98 F.C.C.2d at 1198-99, ¶ 9).

interexchange services between the Access and Network Divisions, respectively, was approved by the Commission at the time it granted Aureon's Section 214 authorization in 1989.[106]

The affiliate transaction rules only prescribe the manner in which the Access Division records on its books of account the charges for assets and services received from its non-regulated affiliate, *i.e.*, the Network Division.[107] The rules do not dictate the actual pricing of facilities provided between Aureon's divisions.[108] The Network Division can charge the Access Division whatever price the Network Division wants, including a price in excess of the recording value prescribed by the affiliate transaction rules, provided that the price recorded on the Access Division's books complies with those rules.[109] Section 32.27(c)(2), provides, in relevant part:

> When services are purchased from or transferred from an affiliate to the carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded. Carriers may record the transaction at an amount equal to or less than the ceiling . . . .[110]

In this case, the lease expenses are calculated and shown on the Annex 3 – Summary Worksheet, and the inclusion of these expenses in the revenue requirement calculation is allowed so long as the lease expenses are less than the fully distributed cost of the underlying assets used to provide the service. Aureon demonstrated in its Direct Case that this condition is met using two different methodologies: the "Additional Cost Justification Methodology," included as Attachment 4 to

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[106] *Id.* (citing *FCC 214 Order*, 3 FCC Rcd. at 1469, ¶ 10).

[107] *See New York Telephone Co., New England Telephone and Telegraph Co., Apparent Violations of the Commission's Rules and Policies Governing Transactions with Affiliates*, Order to Show Cause and Notice of Apparent Liability for Forfeitures, 5 FCC Rcd. 866, 867, ¶ 10 (1990) ("*In re NY Telephone*").

[108] *See id.*

[109] *See id.* at 867-68, ¶¶ 10-11.

[110] 47 C.F.R. § 32.27(c)(2).

Brian Sullivan's Declaration, and the "Alternative Revenue Requirement Calculation" (Annexes 1-2), included in Attachment 2 of its Direct Case.[111]

The "Additional Cost Justification Methodology" included as Attachment 4 to Mr. Sullivan's declaration in the Direct Case **[[BEGIN CONFIDENTIAL]]** [redacted]

[[END CONFIDENTIAL]]

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[111] *See* Direct Case, Declaration of Brian Sullivan (Ex. D) at Attachments 2 and 4 ("Sullivan Declaration").

[112] Brian Sullivan Supplemental Declaration ¶ 4 ("Sullivan Supplemental Declaration"), attached hereto as **Exhibit F**.

[113] *Id.*

[114] *Id.*

In addition, the alternative revenue requirement calculation in Annex 1-2 attached to Mr. Sullivan's declaration did not use the lease developed in Annex 3 as a basis for determining the Access Division's revenue requirement.[115] Annex 1-2 eliminated the use of the interdivision lease charge as a component of the revenue requirement.[116] The Annex 1-2 rate calculation produced a CEA rate that represented the Network Division's fully distributed costs of the underlying assets used by the Access Division to provide CEA service as required by Section 32.27(c)(2) of the Commission's rules.[117] The Annex 3 CEA rate (calculated using the interdivisional lease rate) was less than the Annex 1-2 CEA rate (calculated using only the Network Division's fully distributed costs), which confirms that the Network Division's lease rate was no more than the Network Division's fully distributed cost, and therefore, in compliance with Section 32.27(c)(2).[118]

AT&T asserts that the alternative rate calculation is suspect because it should "sync up" and produce similar results and a similar rate to that in Annex 3.[119] AT&T misunderstands the point of the alternative rate calculation. The purpose of the alternative rate calculation was not to confirm the accuracy of Aureon's Annex 3 rate calculation, as argued by AT&T. Rather, as discussed above, the purpose of the Annex 1-2 alternative rate calculation was to test the Annex 3 result for compliance with the FCC's affiliate transaction rules.[120] The alternative calculation resulted in a CEA rate of **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END**

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[115] *Id.* ¶ 5.

[116] *Id.*

[117] Sullivan Supplemental Declaration ¶ 5; *see also In re NY Telephone*, 5 FCC Rcd. at 867-68, ¶¶ 10-11.

[118] Sullivan Supplemental Declaration ¶ 5.

[119] AT&T Opposition at 70.

[120] Direct Case at 56 (citing Sullivan Declaration ¶ 27).

CONFIDENTIAL]].[121] A lease rate above the Annex 1-2 rate would result in the Network Division recovering more than its fully distributed costs in violation of Section 32.27(c)(2). Any proposed tariff rate less than the Annex 1-2 rate is permitted. Aureon's proposed tariff rate of $0.00576 is less than the Annex 1-2 rate; therefore, it complies with the Section 32.27(c)(2) requirement for the Network Division's lease rate to recover no more than the Network Division's fully distributed costs.

AT&T also takes issue with **[[BEGIN CONFIDENTIAL]]** [redacted]

[121] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[122] AT&T Opposition at 70-71.

[123] Sullivan Supplemental Declaration ¶ 6.

[124] *Id.*

[125] *Id.*

[redacted] **[[END CONFIDENTIAL]]** As discussed further below, the use of DS-1s to allocate COE and CWF is appropriate, and complies with the FCC's rules to allocate costs on the basis of relative use where possible.[128]

AT&T also takes issue with the source used by Aureon for the **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** used to determine the lease charge.[129] The actual amount of the lease charge is moot when it has been established that the charge itself is below fully distributed cost of the underlying assets as required by Section 32.27(c)(2). The Network Division's lease rates are not being investigated in this proceeding because they are nonregulated prices like AT&T's nonregulated interexchange fiber lease rates. The arguments made by AT&T and Sprint regarding alleged problems with Aureon's cost study methodologies are simply irrelevant given that the lease rate used to calculate the proposed tariff rate results in the Network Division recovering less than its fully distributed costs for the facilities used by the Access Division to provide CEA service.

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[126] *Id.* ¶ 7. *See also* **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[127] AT&T Opposition at 58.

[128] *See* 47 C.F.R. § 36.2(a)(2) ("Separations are made on the 'actual use' basis, which gives consideration to relative occupancy and relative time measurements.").

[129] AT&T Opposition at 45-47.

2. Aureon's Allocation of the COE OPEX Costs Was Proper.

[[BEGIN CONFIDENTIAL]] [redacted]

[redacted]

[130] AT&T Opposition at 51.

[131] *Id.* at 51 & n.106.

[132] *Id.* at 51.

[redacted]

[133] Direct Case at 49-50.

[134] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Aureon's Tariff F.C.C. No. 1 lists 16 POIs, which are as follows: Cedar Rapids, Clarinda, Creston, Davenport, Des Moines, Fort Dodge, Grinnell, Knoxville, Mason City, Mount Ayr, Mount Pleasant, Newton, Osceola, Omaha, Sioux City, and Spencer. *See* INAD Tariff F.C.C. No. 1, § 6.2, 1st Revised Page 147, Original Page 147.2. **[[BEGIN CONFIDENTIAL]]** [redacted]

[redacted] **[[END CONFIDENTIAL]]**

[redacted] **[[END CONFIDENTIAL]]**

[135] AT&T Opposition at 53.

[136] Hilton Supplemental Declaration ¶ 7.

[137] AT&T Opposition at 53.

[138] AT&T also takes issue with Aureon's use of November 2017 DS-0 miles, which shows an increase resulting from a greater number of DS-1 circuits in use from the previous cost study, and the reduction in the demand forecast for 2018. AT&T Opposition at 56. **[[BEGIN CONFIDENTIAL]]** [redacted]

3. Aureon's Allocation of the CWF OPEX Costs Was Proper.

a. AT&T Improperly Uses Equivalent T3 Circuits To Allocate Aureon's Network Costs.

As Aureon explained in its Direct Case, the Network Division provisions circuits to the Access Division at the DS-1 level, and all of the circuits for CEA service are, in fact, DS-1 circuits and not DS-3 or T3s.[139] Much of the SONET ring transport equipment in Aureon's fiber network is only equipped with DS-3 level ports, and thus, it is necessary for Aureon to assign DS-1 circuits to a DS-3 circuit for transport.[140] Although DS-1 circuits are assigned to DS-3s to transport calls over the CEA fiber network, those DS-3s are taken down to the DS-1 level to deliver traffic to the switches of the LECs subtending Aureon's network.[141] The subtending LECs further reduce the DS-1 circuits to the DS-0 level to deliver calls to their end user customers.[142] Equipment is needed to consolidate the DS-1 circuits to DS-3s for transport, and additional equipment is needed to reduce the DS-3s back down to DS-1 circuits.[143]

Even though circuits in the CEA network are provisioned at the DS-1 level, and Aureon's CEA network in fact consists of DS-1 circuits, AT&T argues that Aureon over-allocated the CWF fiber costs to the Access Division because **[[BEGIN CONFIDENTIAL]]** [redacted]

[redacted]

[redacted] **[[END CONFIDENTIAL]]**

[139] Direct Case at 45 (citing Declaration of Frank Hilton (Ex. A) ¶ 13 ("Hilton Declaration")).

[140] *Id.*

[141] *Id.*

[142] *Id.* (citing Hilton Declaration ¶ 14).

[143] *Id.*

[[END CONFIDENTIAL]

b. AT&T Incorrectly Uses the System Method To Attempt To Allocate CWF Costs.

In discussing Aureon's [[BEGIN CONFIDENTIAL]]

[144] *Id.*

[145] Direct Case, Hilton Declaration ¶ 13.

[146] AT&T Opposition at 58.

[147] *Id.*

[redacted]

[148] Direct Case, Hilton Declaration ¶ 13.

[149] *Id.* ¶ 16.

[150] AT&T Opposition at 59.

[151] *Id.*

[152] Sullivan Supplemental Declaration ¶ 8.

[redacted]

[153] *Id.* ¶ 9.

[154] *Id.*

[155] *Id.*

[156] *Id.*

[157] *Id.*

[158] NECA Reporting Guideline 4.19 at 7 ("NRG 4.19"), attached hereto as **Exhibit G**.

[159] NRG 4.19 at 3.

[160] Hilton Supplemental Declaration ¶ 5.

[161] *Id.*

[redacted]

[162] Sullivan Supplemental Declaration ¶ 10.

[163] NRG 4.19 at 8.

[164] Sullivan Supplemental Declaration ¶ 11.

[165] *Id.*

[166] AT&T Opposition, Declaration of Daniel P. Rhinehart (Ex. A) at Exhibit A ("Rhinehart Declaration").

[167] Sullivan Supplemental Declaration ¶ 11.

[168] *Id.*

[169] *Id.*

[redacted]

[170] *Id.*

[171] *Id.*

[172] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[[END CONFIDENTIAL]]

c. Aureon's Past CWF Costs Are Irrelevant to Aureon's CWF Costs Used To Calculate Aureon's CEA Rate.

[[BEGIN CONFIDENTIAL]]

[173] AT&T Opposition at 65. *See also generally* AT&T Opposition Section II.C.

[redacted]

[174] AT&T Opposition at 67-68 (citations omitted).

[175] *Liability Order*, 32 FCC Rcd. at 9684, ¶ 17.

[176] AT&T Opposition at 68.

[177] Hilton Supplemental Declaration ¶ 9.

[178] *Id.*

[redacted] **[[END CONFIDENTIAL]]**

4. Aureon's Traffic Projections Are Reasonably Accurate.

AT&T argues that Aureon's traffic projections are unreliable, particularly when compared to Aureon's historic projections to actual traffic volumes. However, Aureon's traffic forecasts are more accurate than AT&T suggests. As directed by the FCC, Aureon provided the actual, historical monthly interstate minutes-of-use ("MOU") for the months covered by Aureon's 2010, 2012, 2013, 2014, and 2016 tariff filings. Aureon also provided additional information regarding its projections for the prior two tariff filings for 2006 and 2008. **[[BEGIN**

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[179] *Id.*

[180] *Id.*

[181] *See* AT&T Opposition at 67, Table 9. Aureon has not verified that the data submitted by AT&T in Table 9 is accurate.

[182] Hilton Supplemental Declaration ¶ 9.

[183] *Id.*

[184] *Id.*

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[redacted]

[redacted]

[185] Aureon informed the Commission in the Direct Case that the traffic carried by the CEA network is inconsistent and difficult for statistical tools to model. Direct Case at 60-61. In attempting to demonstrate that Aureon's historic projections were inaccurate, AT&T acknowledged that "there is a lot of variation from year to year" as shown in Aureon's traffic forecasts. AT&T Opposition at 73. AT&T's analysis that Aureon's projected demand is inaccurate when compared to actual demand is fundamentally flawed because that analysis does not use actual demand data. Rather, the "actual demand" shown in Table 10 of AT&T's Opposition "is a simple average of the actual demand reported by Aureon in its Tariff Filings for the two year period encompassed within the test period. Thus, for example, the actual demand compared to Projected Demand for the test period 7/1/04 to 6/30/05 would be a simple average of the reported actual demand for 2004 and 2005." *Id.* at 73, n.178. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[186] Only data from the first four months of 2018 were available. Current projection trends indicate that the MOUs for 2018 will be less than that forecast in Transmittal No. 36.

[redacted]

[187] AT&T Opposition at 76.

[188] *Id.*

[189] *Id.* at 76, Chart 1.

[redacted]

[[END CONFIDENTIAL]]

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[190] *Id.* at 78, Chart 2.

[191] *Id.* at 78.

[192] On May 10, 2018, Inteliquent filed comments in the instant proceeding stating that it has "insight into possible demand for use of Aureon's CEA network", and that "Inteliquent could be delivering up to 250 million minutes per month to Aureon in the coming months." Inteliquent

5. It Is Improper for Bypass Traffic To Be Incorporated into Aureon's Cost Study To Calculate the CEA Rate.

AT&T asserts that Aureon continues to ignore the bypass traffic issue, which, according to AT&T, understates the minutes of use that should have been used in calculating Aureon's proposed rate. AT&T's position that bypass minutes should be incorporated into Aureon's projected MOUs is wholly and completely without merit. As the Commission is aware, IXCs are required to use the CEA network to route calls to the subtending LECs.[193] Specifically, the FCC ruled as follows:

> All toll traffic, both inter- and intra-state, is to transit the Des Moines switch for ticketing and billing . . . . In reaching its decision, the Bureau determined that INAD's [Iowa Network Access Division's] inclusion of a mandatory terminating use requirement for interstate traffic was not 'unreasonable [nor would differ] substantially from the normal way access is provided, as both an originating and terminating service.'"[194]

Comments at 1, WC Docket No. 18-60 (filed May 10, 2018). Inteliquent's traffic projections do not assist the Commission's evaluation of the accuracy of Aureon's traffic projections as Inteliquent does not provide any information regarding how its traffic volumes would vary from month to month, nor does Inteliquent provide any data demonstrating how it determined its traffic projection. Inteliquent's traffic projection does not provide any actionable information at all because Inteliquent states that it "*could* be delivering *up to* 250 million minutes per month" to Aureon. *Id.* (emphasis added). This means that Inteliquent's traffic volumes could range anywhere from a low of zero minutes to a high of 250 million minutes per month. Inteliquent's maximum annualized MOUs would equal to an additional 3 billion MOUs on the CEA network.
[[BEGIN CONFIDENTIAL]] [redacted] **[[END CONFIDENTIAL]]**

[193] *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, Order on Reconsideration, 4 FCC Rcd. 2201, 2201, ¶¶ 2-3 (1989).

[194] *Id.*

Aureon only learned about the bypass problem through documents available in litigation. Litigation documents in other cases suggest that billions of minutes of use have been removed from the CEA network, and that AT&T has known about these violations for a significant period of time. In AT&T's complaint proceeding against Great Lakes, the parties stipulated that **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**[195] By contrast, Aureon's interstate CEA minutes-of-use for the period ending June 30, 2018 are projected to be only 2,771,273,183. The amount of the traffic bypassing Aureon's network in violation of the Commission's CEA mandatory use policy is unknown at this time. In the *AT&T v. Great Lakes* case, the amount of traffic terminated by Great Lakes alone was approximately **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** the amount of traffic that Aureon is projected to carry for all IXCs for an entire year.

[[BEGIN CONFIDENTIAL]] [redacted]

[195] *See* **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[196] AT&T Opposition at 75; *Id.*, Habiak Declaration ¶ 27.

[redacted] **[[END CONFIDENTIAL]]**

Aureon has no way of knowing or quantifying the scope or scale of the bypass traffic.[199] If the bypass traffic had been routed through the CEA network as required by the FCC's CEA mandatory termination policy, Aureon's CEA rate would have been significantly reduced not just for AT&T, but also for all of AT&T's smaller IXC competitors serving customers in rural Iowa. However, traffic that should be sent to the CEA network is being diverted to other intermediate carriers,[200] and IXCs are paying those carriers for routing that traffic to various LECs. Because other intermediate carriers are being paid to carry bypass traffic, and such traffic is never routed to the CEA network, there is no reason for Aureon to incorporate bypass traffic

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[197] AT&T Opposition at 82; *Id.*, Habiak Declaration ¶ 30.

[198] AT&T Opposition at 82; *Id.*, Habiak Declaration ¶ 32.

[199] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[200] It is Aureon's understanding that other intermediate carriers are paid by IXCs for carrying bypass traffic, and that traffic consists of conferencing or other access stimulation traffic. Those intermediate carriers are then sharing access revenues with conference call providers or other companies involved in access stimulation schemes.

into its MOU projections. Even if the intermediate carriers providing access service for bypass traffic were not being paid, it would still be unnecessary for Aureon to take that traffic into account for its cost studies because that traffic is never routed to the CEA network, and Aureon does not provide any services to route that traffic to the subtending LECs. Moreover, Aureon has no way of knowing the amount of traffic bypassing its network, and therefore, Aureon does not have any basis to even quantify the MOUs bypassing the CEA network in any event. The purpose of preparing traffic projections is to quantify traffic that will be routed over the CEA network, rather than quantify traffic (as AT&T would have) that will not be routed over the CEA network.

CEA service is provided for all traffic carried by the CEA network. No traffic carried on the CEA network is bypass traffic, and AT&T's argument that Aureon should be required to include bypass traffic in its cost study is unavailing. When IXCs pay access charges to intermediate carriers to bypass the CEA network to facilitate access stimulation, the amount of capital available to invest in broadband deployment and other network investments that would benefit consumers is substantially reduced.[201] Aureon does not have any ability to know the amount of traffic that is bypassing the CEA network. If AT&T wants Aureon to include bypass traffic in its cost studies, the FCC should enforce the CEA mandatory use policy, and direct all carriers to route all traffic, including access stimulation traffic, to subtending LECs over the CEA network. Such action by the FCC would lower the CEA rate for all IXCs, put an end to access revenue sharing arrangements that are now being carried out at the intermediate carrier level, and

[201] *USF/ICC Transformation Order*, 26 FCC Rcd. at 17876, ¶ 664 (citing AT&T Section XV Comments at 3).

enable carriers to invest in expanding broadband facilities rather than paying access stimulators for arrangements that serve to line the pockets of the perpetrators of those schemes.

F. AT&T and Sprint's Arguments Concerning the Relationship Between the CLEC Benchmark Rate and Cost Support Are Flawed.

1. AT&T and Sprint Incorrectly Assert that Aureon Should only Be Permitted To Bill a Rate Less than or Equal to the CenturyLink CLEC Rate Benchmark.

AT&T and Sprint's argument that the FCC should require Aureon to bill rates less than or equal to AT&T's calculated CenturyLink CLEC rate benchmark is fundamentally flawed. AT&T contends that Sections 51.905(b) and 51.911(c) provide that "as of July 1, 2013, the applicable benchmark under the transitional access service pricing rules was and remains the rate under the CLEC benchmark rules, not the 2011 default rate cap" (*i.e.*, Aureon's default transitional rate of $0.00819).[202] Similarly, Sprint argues that the Commission "already rejected" Aureon's argument that "it is 'irrational' to apply both" the default transitional rate and the CLEC benchmark rate by finding in the *Liability Order* that "Aureon could not set a tariffed rate any higher than $0.00819, because that was Aureon's tariffed rate when the [*Connect America Order*] capped rates in 2011."[203] Further, AT&T asserts that Aureon places too much emphasis on "a single word" in the *Liability Order* by arguing that the "'default transitional rate applies 'notwithstanding' the CLEC rate benchmark.'"[204]

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[202] AT&T Opposition at 84 (emphasis added). *See also id.* ("As of July 1, 2013, the applicable rate cap of CLECs is *not* what Aureon calls the 'default' transitional rate . . . . Rather, the rules clearly provide that, as of July 1, 2013, the applicable benchmark rate for CLECs 'shall be no higher than' the rates' charged by the competing incumbent local exchange carrier . . . ." (quoting 47 C.F.R. § 51.911(c))).

[203] Sprint Opposition at 9 (citing first Direct Case at 8; and then citing *Liability Order*, 32 FCC Rcd. at 9688-89, ¶¶ 23-24).

[204] AT&T Opposition at 84 (emphasis added) ("Citing a single word in Section 51.905(b) of the Commission's CLEC benchmark rules, Aureon argues that the 2011 "default transitional rate

AT&T and Sprint's reading of Paragraph 26 of the *Liability Order*, however, renders the entire decision meaningless. In that section, the FCC stated that "Aureon must comply with the rate cap and rate parity rules, which apply '[n]otwithstanding any other provision of the Commission's rules.'"[205] The *Liability Order* held that the $0.00819 default transitional rate applied to Aureon as of July 1, 2013, when Aureon increased its CEA tariff rate. A more accurate reading of this language – in the context of Paragraph 26 and the entire *Liability Order* – would be that the FCC meant here that Aureon must comply with the $0.00819 default transitional rate (*i.e.*, "rate cap and rate parity rules") notwithstanding any preceding FCC decision or rule (*i.e.*, "any other provision of the Commission's rules") – referring to Sections 51.905 and 51.911(c) of the Commission's rules.[206]

It is clear that the FCC intended in the *Liability Order* for the $0.00819 default transitional rate to continue to apply to Aureon for at least two reasons. First, if the FCC intended "rate cap and rate parity rules" to refer to the CLEC rate benchmark (*i.e.* the NECA rates) – rather than the default transitional rate – the *Liability Order* would have concluded that Aureon did not violate those rules. Aureon's interstate tariff rate at the time of the *Liability*

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applies '*notwithstanding*' the CLEC rate benchmark." (emphasis added) (citing Direct Case at 62)). *See also Liability Order*, 32 FCC Rcd. at 9690, ¶ 26.

[205] *Liability Order*, 32 FCC Rcd. at 9690, ¶ 26 (emphasis added) (quoting 47 C.F.R. § 51.905).

[206] *Compare id.* at 9688, ¶ 23 ("Rule 51.905(b) caps interstate tariff rates [at] no higher than the default transitional rate, i.e., the interstate rates effective December 31, 2011. In addition, . . . rates [must] be brought to parity . . . by July 2013. Specifically, . . . Rule 51.911 [] requires a [CLEC] . . . beginning on July 1, 2013, to reduce its . . . rates to those of the competing ILEC, which would be at parity at such time." (internal citations and quotations omitted), *with id.* at 9689, ¶ 24 ("We do not reach the issue of whether Aureon's rates violate Rule 51.911(c) because we do not have an adequate record to determine the pertinent benchmark rate.").

Order was well below the NECA tariff rate.[207] Second, the FCC also states in Paragraph 26 of the *Liability Order* that "Aureon must comply with [Section] 61.38 [] to support its rates at or below the cap . . . ."[208] As stated above, cost studies are not required to be submitted by CLECs to demonstrate compliance with the CLEC rate benchmark. Therefore, as discussed more fully below, it is appropriate to infer here that the FCC meant to imply here the relationship between cost studies and the $0.00819 default transitional rate – not the CLEC rate benchmark.[209]

Further, requiring Aureon to comply with AT&T's calculated CenturyLink CLEC rate benchmark of $0.00312 would mandate that Aureon charge an unjust and unreasonable rate – contrary to the FCC's ratemaking regulations in Parts 32, 36, 64, 65, and 69,[210] and in violation of Sections 201(b), 204(a)(l), and 205(a) of the Communications Act.[211] A rate is just and reasonable if the rate: (1) is "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital;" (2) provides sufficient "revenue not only for operating expenses but also for the capital costs of the business;" and (3) includes revenue for "service on the debt and dividends on the stock."[212] Compliance with a $0.00312 CLEC rate benchmark would render Aureon's rate unjust and unreasonable because it would force Aureon to set a rate far below its actual costs. Accordingly, requiring Aureon to comply

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[207] *Cf. Liability Order*, 32 FCC Rcd. at 9689, ¶ 24 ("We find that Aureon violated the interstate rate cap requirement when, in June 2013, it raised its interstate switched access rate [] to $0.00896 . . . above its $0.00819 rate cap.").

[208] *Id.* at 9690, ¶ 26.

[209] *See infra* Section II.C.2.

[210] *See* 47 C.F.R. Parts 32, 36, 64, 65, and 69.

[211] *See* 47 U.S.C. §§ 201(b), 204(a)(l), and 205(a).

[212] *Jersey Cent. Power & Light Co. v. Fed. Regulatory Energy Comm'n*, 810 F.2d 1168, 1176 (D.C. Cir. 1987).

with AT&T's calculated CenturyLink CLEC rate benchmark would force Aureon to charge an unlawfully unjust and unreasonable rate.

a. Aureon Should Be Permitted To Set a Rate that Is Less than or Equal to the Default Transitional Rate.

Instead, the FCC should allow Aureon to bill a CEA tariff rate that is less than or equal to Aureon's default transitional rate of $0.00819 – in conformance with all other LECs that bill their default transitional rates without cost support. Consequently, the Commission should only subject Aureon to the default transitional rate without imposing either a CLEC rate benchmark or a cost support requirement for the four following reasons.

First, the rate ceiling established by the default transitional rate would serve no purpose if the FCC also imposes the CLEC rate benchmark as a rate ceiling on Aureon.[213] Therefore, in the *Liability Order*, the FCC reasonably concluded that the $0.00819 default transitional rate applies "notwithstanding" the CLEC rate benchmark.[214] Second, the CLEC rate benchmark is inapplicable to CEA service as that benchmark assumes that Aureon provides CEA service to end users in competition with a competing incumbent LEC ("ILEC"). Aureon, however, does not provide its CEA service to end users.[215] Third, other CLECs are not required to submit cost studies as the purpose of the CLEC rate benchmark is to avoid cost-based factors in determining

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[213] *See Liability Order*, 32 FCC Rcd. at 9688, ¶ 23 ("Rule 51.905(b) caps interstate 'tariff rates [at] no higher than the default transitional rate' . . . ." (quoting 47 C.F.R. § 51.905(b)); *Technology Transitions*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd. 8283, 8292, ¶ 27 (2016) (default transitional rate already "prevents . . . LECs from charging IXCs excessive rates for switched access").

[214] *Liability Order*, 32 FCC Rcd. at 9677, ¶ 26 (stating that the default transitional rate applies "'notwithstanding any other provision of the Commission's rules'" and "regardless of how a CLEC calculates its rates" (quoting 47 C.F.R. § 51.905)).

[215] *See* Direct Case at Section II.A.2.

just and reasonable rates.[216] Nevertheless, the Commission treats Aureon differently than all other CLECs by requiring Aureon to submit cost studies supporting its rates because Aureon is classified as a dominant carrier.[217] The FCC continues to subject Aureon to a cost support requirement despite reclassifying Aureon as a CLEC in the *Liability Order*.[218] The primary purpose of the CLEC rate benchmark, to replace rates calculated on the basis of cost studies, is inapplicable to Aureon whose costs and revenues are regulated by the Commission under Section 61.38 of its rules. Finally, the CLEC rate benchmark cannot lawfully reduce Aureon's rate below the just and reasonable level established by cost studies that fully comply with the FCC's accounting rules and maximum authorized rate of return.[219]

In light of these reasons, so long as Aureon's tariff rate is less than or equal to the default transitional rate of $0.00819, Aureon should be treated like all other LECs that are not required to recalculate rates based on changes to their revenue requirements. The purpose of the default transitional rate is "to provide more certainty and predictability regarding revenues to enable carriers to invest in modern, IP networks."[220] The FCC requires tariffs to contain default transitional rates, while permitting carriers "to enter into negotiated agreements that differ from

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[216] *See Petition of Westelcom Network, Inc. for Limited, Expedited Waiver of Section 61.26(a)(6) of the Commission's Rules,* Order, 32 FCC Rcd. 3693, 3694, ¶¶ 3-4 (2017) ("Rather than regulating the costs or revenues of [CLECs], the [FCC] established market-based safe harbor benchmarks above which [CLECs] are prohibited from tariffing . . . ." (citing *CLEC Access Charge Reform Order*, 16 FCC Rcd. at 9925, ¶ 3); *Connect America Order*, 26 FCC Rcd. at 17966, ¶ 866 ("The benchmarking rule was designed as a tool to constrain [CLECs'] access rates to just and reasonable levels without the need for . . . evaluation of [CLECs'] costs.").

[217] *Liability Order*, 32 FCC Rcd. at 9690, ¶ 26 ("[A] dominant carrier such as Aureon must . . . supply 'supporting . . . material' justifying its rates." (quoting 47 C.F.R. § 61.38)).

[218] *Id.* at 9689, ¶ 25 ("Aureon is a CLEC.").

[219] *See* Direct Case at Section I.

[220] *Connect America Order*, 26 FCC Rcd. at 17669, ¶ 9.

the default rates."[221] To provide "carriers with the benefit of any cost savings and efficiencies they can achieve," LECs are no longer required to recalculate their rates based on their revenue requirements and rate of return, but now can charge the default transitional rates and "retain revenues even if their switched access costs decline."[222]

Aureon needs predictable revenue recovery to ensure that Aureon can maintain and enhance its network, and to provide rural broadband service in Iowa. So long as Aureon bills a CEA tariff rate that is less than or equal to the default transitional rate of $0.00819, Aureon should not be required to reduce its rates further based on cost studies or a CLEC rate benchmark. Instead, as is the case with all other LECs, Aureon should be permitted to retain all cost savings and efficiencies achieved through compliance with a price cap set at Aureon's $0.00819 default transitional rate. Ultimately, the FCC should find that (1) the CLEC rate benchmark is incompatible with both rate of return regulation and the default transitional rate, and therefore, (2) only the default transitional rate is applicable to Aureon. Therefore, the Commission should only subject Aureon to the $0.00819 default transitional rate – without consideration of a CLEC rate benchmark or cost support.

b. If the FCC Does not Subject Aureon to the Default Transitional Rate, then the FCC Should Permit Aureon To Charge a Cost-Supported Rate.

If the Commission prefers to treat Aureon differently than all other LECs by not permitting Aureon's default transitional rate to serve as a price cap, the FCC should then allow Aureon to charge a cost-supported rate. Pursuant to the "end result standard" promulgated by the

[221] *Id.* at 17939, ¶ 812, and 17945-46, ¶ 828.

[222] *Id.* at 17957-58, ¶ 851, and 17983-84, ¶ 900.

D.C. Circuit in *Jersey Central Power & Light Co.*,[223] Aureon must be permitted to charge its cost-supported rate regardless of the CLEC rate benchmark. According to that standard, a rate is just and reasonable if it "may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed . . . ."[224] Whether a rate is just and reasonable pursuant to the end result standard may be determined "on the basis of cost."[225] Specifically, "to the extent practical, telephone prices 'should be based upon the true cost characteristics of telephone company plant.'"[226] Accordingly, the end result standard requires the Commission to permit Aureon to set a rate based on its actual costs – even if the resulting cost-supported rate is higher than the CLEC rate benchmark.

Additionally, "the Commission must factor overriding equitable considerations"[227] in considering the lawfulness of Aureon's rate. Consequently, the FCC should determine whether Aureon's $0.00576 tariff rate provides sufficient revenue if AT&T continues not to pay Aureon's tariff rates. Such an examination would require the FCC to consider both Aureon's cost studies and AT&T's debt to Aureon of more than $70 million (not including late penalties) resulting from AT&T's underpayment of Aureon's invoices since September 2013.[228] An examination of both cost studies and equitable factors would ensure that the Commission prescribes a just and reasonable rate for Aureon – irrespective of any CLEC rate benchmark.

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[223] *Jersey Cent. Power & Light Co.*, 810 F.2d at 1177.

[224] *Id.*

[225] *MCI Telecomms. Corp. v. FCC*, 675 F.2d 408, 410 (D.C. Cir. 1982).

[226] *Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC*, 737 F.2d 1095, 1147 (D.C. Cir. 1984) (quoting *MTS and WATS Market Structure*, Third Report and Order, 93 F.C.C.2d 241, 251 (1983)).

[227] *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1240 (D.C. Cir. 1993).

[228] *See* Direct Case at Section I.

2. AT&T and Sprint Incorrectly Contend that Aureon Must Charge a Cost-Supported Rate Below the CLEC Rate Benchmark.

AT&T and Sprint mistakenly assert that – as a dominant carrier – Aureon must be required to continue submitting cost studies and bill a rate lower than the CLEC rate benchmark if Aureon's cost studies show that the CLEC rate benchmark would cause Aureon to earn in excess of the FCC's authorized rate of return.[229] AT&T and Sprint's flawed conclusion stems from a misreading of Paragraph 26 of the *Liability Order*, wherein the Commission states that "the rate cap and rate parity rules" and "Section 61.38 . . . do not conflict; rather they complement each other."[230] As discussed above, a more accurate reading of Paragraph 26 demonstrates that the FCC was discussing here the fact that cost studies "complement" the $0.00819 default transitional rate – not the CLEC rate benchmark.

AT&T and Sprint disingenuously fail to consider here that the purpose of price cap regulation is to avoid cost factors in determining the reasonableness of a rate.[231] When the Commission established rate benchmarking for CLECs, it stated that a CLEC's access rates would be conclusively presumed to be just and reasonable if the rates were at or below the benchmark.[232] If Aureon was subject to the CLEC rate benchmark, there would be no need for Aureon to perform cost studies to support its rates at or below the CLEC rate benchmark because rates at or below that level are conclusively presumed by the FCC to be just and reasonable.

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[229] AT&T Opposition at 85-86; Sprint Opposition at 4-5.

[230] *Liability Order*, 32 FCC Rcd. at 9690, ¶ 26 (emphasis added).

[231] *See, e.g.*, Sprint Opposition at 5 ("The Commission's goal in adopting the rate cap and rate parity requirements was to move carriers toward collecting their costs from their own customers instead of other carriers. As a result, the cost basis for rates *above* the applicable cap is immaterial. The cost basis is material only if the rate is *below* the cap." (citing *USF/ICC Transformation Order*, 26 FCC Rcd. at 17904, ¶ 737; and then citing 47 C.F.R. § 51.713)).

[232] *CLEC Access Charge Reform Order*, 16 FCC Rcd. at 9938, ¶ 40.

Moreover, it is clear that the Commission was stating in the *Liability Order* that Aureon's cost support requirement complement's its $0.00819 default transitional rate cap as the FCC is investigating the CLEC rate benchmark in this proceeding. Finally, AT&T and Sprint ignore the fact that requiring Aureon to comply with both the CLEC rate benchmark and the cost support requirement would be entirely out of step with established Commission practice of refraining from comparing the rates of carriers that do not share similar regulatory classifications.[233]

3. AT&T Incorrectly Asserts that the CLEC Rate Benchmark Cannot Serve as a Rate Floor.

AT&T argues that treating the CLEC rate benchmark as a rate floor "makes a mockery of the CLEC benchmark rate and turns the Commission's rate cap and rate parity regulations on their head."[234] AT&T's claim cannot be further from the truth of the matter. Instead, the FCC is bound by both Section 201(b) of the Communications Act and a long line of court decisions[235] to

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[233] *See, e.g., Sprint Communications Co., L.P. v. MGC Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd. 14027, 14029, ¶ 6 (2000) ("[T]o the extent a review of the reasonableness of a CLEC's rates depends on a carrier-specific review of the costs of providing service, it is impossible to be categorical on this point since a *CLEC's costs may not be comparable to those of an ILEC.*" (emphasis added)); *IT&E Overseas, Inc. v. Micronesian Telecommunications Corp.*, Memorandum Opinion and Order, 13 FCC Rcd. 16058, 16062-64, ¶¶ 6-8 (1998) (declining to find that a price cap carrier's rates were unreasonable for being higher than those of a rate of return carrier because the carriers were not "similarly situated").

[234] AT&T Opposition at 7.

[235] *See, e.g., FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) (stating that just and reasonable involves "a balancing of the investor and the consumer interests"); *Id.* (stating that a carrier's return "should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital"); *Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968) ("[T]here can be no constitutional objection if [an agency], in its calculation of rates, takes fully into account the various interests which Congress has required it to reconcile . . . [are] determined in conformity with the [agency's enabling act], and [are] intended to balance the investor and the consumer interests."); *Id.* at 767 (stating that so long as the "total effect of a rate" was not unjust and unreasonable, a rate was constitutionally permissible).

set a rate for Aureon that is just and reasonable – even if that rate is above the CLEC rate benchmark. Accordingly, the FCC must permit Aureon to charge a cost-supported tariff rate above the CLEC rate benchmark if the tariff rate has been calculated in compliance with both the Commission's accounting regulations and its authorized rate of return. Such a tariff rate is just and reasonable, and therefore, lawful. Imposing a CLEC rate benchmark requiring Aureon to charge less than the reasonable, cost supported rate would constitute an unlawfully unjust and unreasonable rate. Regardless of the CLEC rate benchmark, a rate still must comply with *Jersey Central Power & Light Co.*'s end result standard to be just and reasonable.[236] Pursuant to that standard, the justness and reasonableness of a rate may be determined "on the basis of cost."[237] Therefore, a rate higher than the CLEC rate benchmark would be justified if Aureon's cost studies demonstrate that such a rate is just and reasonable, and therefore, lawful.

Should the FCC decide to apply the CLEC rate benchmark to CEA service, then that rate should only serve as a price floor. To reduce the burden on the FCC associated with reviewing Aureon's cost studies, however, the Commission could deem a rate set by Aureon between the CLEC rate benchmark (the price floor) and the $0.00819 default transitional rate (the price ceiling) as a rate within a "zone of reasonableness" – *i.e.*, a presumptively reasonable rate not

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[236] *See Jersey Cent. Power & Light Co.*, 810 F.2d at 1176. *See also id.* at 1177 (stating that "[t]he Supreme Court has repeatedly reaffirmed the 'end result' standard of *Hope Natural Gas*" (citing first *FPC v. Memphis Light, Gas & Water Div.*, 411 U.S. 458, 474 (1973) ("under *Hope Natural Gas* rates are 'just and reasonable' only if consumer interests are protected and if the financial health of the pipeline in our economic system remains strong"); then citing *Colo. Interstate Gas Co. v. FPC*, 324 U.S. 581, 605 (1945) (stating that the end result standard "is [] a standard . . . of finance resting on stubborn facts"); and then citing *Permian Basin Area Rate Cases*, 390 U.S. at 792 (a rate "must reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable"))).

[237] *MCI Telecomms. Corp.*, 675 F.2d at 410.

requiring cost support.[238] Allowing Aureon to set a rate between such a price floor and price ceiling would subject Aureon to price-focused rate regulation – similar to all other LECs.

Nevertheless, AT&T argues that permitting Aureon to use the CLEC rate benchmark as a rate floor would enable "Aureon to raise its rates to levels higher than the rates it was authorized to charge thirty years ago, in 1988."[239] AT&T further asserts that "[b]ecause CEA providers like Aureon should be reducing costs, interpreting the CLEC benchmark rule as a floor makes no sense . . . and runs directly counter to the purposes of the CLEC benchmark rules."[240] Again, AT&T cannot be further from the truth. First, even if the CLEC rate benchmark served as a rate floor, Aureon would still be bound by the *Liability Order* to set a rate below the $0.00819 default transitional rate – a rate cap set far below Aureon's 1988 tariff rate of $0.0161.[241] Second, AT&T's contention ignores the fact that the purpose of establishing a zone of reasonableness is to balance the need to keep CEA service costs low while enabling Aureon to cover its costs and further invest in its network.[242] Accordingly, it is clear from AT&T's distortion of facts here that its goal is to return to its 1988 monopolistic position by driving Aureon out of business – to the detriment of Iowa consumers.

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[238] *See Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd. 6786, 67876-89, ¶¶ 3, 5-20 (1990) (stating that price cap regulation requires the FCC to set a rate within a "zone of reasonableness" by focusing on prices rather than costs or earnings).

[239] AT&T Opposition at 85.

[240] *Id.* at 85-86.

[241] *See* Aureon Answer at Ex. 8 (discussing changes between 1988 and 1989 tariff rates).

[242] *See Hope Nat. Gas*, 320 U.S. at 603 (stating that a just and reasonable rate involves "a balancing of investor and consumer interests").

4. AT&T and Sprint Disingenuously Claim that Waiver of Sections 51.911(c) and 61.26 Is not in the Public Interest.

AT&T and Sprint misleadingly assert that there are no public interest justifications for the FCC to waive the application of Sections 51.911(c) and 61.26 of the Commission's rules to Aureon. AT&T claims that "ratepayers would be harmed, and would suffer unfair prejudice if the benchmark rules were waived," and that it "is evident that a waiver at this juncture would further only Aureon's interest."[243] Likewise, Sprint contends that "[t]here is no public policy justification for Aureon's waiver request – and, in fact, granting a waiver would provide a strong disincentive for Aureon" to adopt innovative technology for its network.[244] AT&T and Sprint's arguments here are a distortion of the reality that without a financially viable CEA network, thousands of Iowa's rural consumers would face less choice and higher prices for telecommunications services.

The FCC may grant a waiver of its rules for good cause shown.[245] A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.[246] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[247] Such a waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.[248]

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[243] AT&T Opposition at 87.

[244] Sprint Opposition at 1.

[245] 47 C.F.R. § 1.3.

[246] *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[247] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Ne. Cellular*, 897 F.2d at 1166.

[248] *Ne. Cellular*, 897 F.2d at 1166.

If the Commission adopts AT&T's proposal to cap Aureon's rates at its calculated CenturyLink CLEC rate benchmark of $0.00312, Aureon will not be able to recover its costs and will be forced to shut-down its CEA network to the detriment of thousands of rural ratepayers.[249] Smaller IXCs would also be adversely impacted by the discontinuance of CEA service, as it becomes more expensive for them to continue to serve rural Iowa without the presence of a CEA service provider. The ultimate outcome of the below-cost rates that AT&T seeks to impose on the CEA network is less competition with AT&T, and reduced consumer choice in rural areas of Iowa – essentially turning the clock back to 1988.

AT&T seeks to return to the pre-CEA network of 1988. At that time, AT&T, was the monopoly provider of an interstate long distance service connected to multiple tandems in Iowa deployed by AT&T. These multiple tandems, however, were ultimately divested to NWB (now CenturyLink) as a consequence of Judge Greene's Modification of Final Judgement ("MFJ") antitrust consent decree.[250] In approving the construction of the CEA network, both the FCC and the Iowa Utilities Board ("IUB") decided that the CenturyLink tandems would not provide the traffic concentration capabilities available from Aureon's CEA network to make it economically feasible for smaller IXCs to compete with AT&T in rural Iowa.[251] By providing smaller IXCs with the ability to connect at a single central access tandem in Des Moines to provide service to

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[249] Sprint has already been forced out of the residential long distance business and is only participating in this tariff investigation because Sprint owes payment of CEA invoices going back to 2008.

[250] *See United States v. AT&T*, 552 F.Supp. 131, 232 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States*, 460 US. 1001 (1983).

[251] *See FCC 214 Order*, 3 FCC Rcd. at 1471, ¶¶ 22-23. *IUB Order*, 1988 Iowa PUC Lexis 1, slip op. at 10. The Iowa Supreme Court, in affirming approval of the CEA network, recognized that the provision of modern information services was an important objective of CEA service. *Nw. Bell Tel. Co.*, 477 N.W.2d at 681 ("the network will also offer 'modern information systems'").

all the exchanges of the more than 200 LECs connected to the CEA network, Aureon's CEA service succeeded in making equal access available in rural areas and provided rural consumers with a choice of long distance carriers other than AT&T.[252] The single connection at the central access tandem in Des Moines and the concentration of rural traffic from the exchanges of more than 200 LECs at that one location made serving rural areas just as attractive as a smaller IXC's interconnection to a tandem for a medium-sized city.[253]

By contrast, CenturyLink does not operate a CEA network. A smaller IXC cannot connect at a single CenturyLink tandem and obtain access to the exchanges of the 200 LECs subtending the CEA network.[254] CenturyLink's network does not concentrate the rural traffic of 200 subtending LECs at a single tandem where smaller IXCs can interconnect to compete with AT&T.[255] CenturyLink does not operate such a CEA central access tandem and does not have transport facilities that connect a single access tandem to all the networks of the 200 subtending LECs.[256] AT&T focuses on 20 miles of transport between the LECs' end offices and CenturyLink's tandems, which is not a part of a CEA network.[257] In *Alpine*, the FCC held that Aureon's responsibility ends at the POI, and CEA service does not involve transport to the end offices of the LECs.[258] CEA service cannot be provided with only 22 average miles of transport

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[252] *See FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 2 (stating that AT&T's smaller competitors "would find it an expensive task to provide their own facilities" to each of the rural LEC end offices subtending Aureon's tandem).

[253] Hilton Supplemental Declaration ¶ 3.

[254] *Id.*

[255] *Id.*

[256] *Id.*

[257] *Id.* ¶ 4.

[258] *Alpine*, 27 FCC Rcd. ¶ 23 (2012) ("The POI is where "responsibility" for handling traffic shifts between INS and the Iowa LECs.").

as asserted by AT&T[259] because the traffic must be transported from all over Iowa and concentrated at the central access tandem in Des Moines to create the level of rural traffic concentration sufficient to make interconnection attractive for AT&T's smaller competitors.[260]

While a primary function of CEA service is to provide equal access, CenturyLink's network does not provide equal access to the exchanges of the 200 subtending LECs.[261] CenturyLink would have to make major investments in new network components and construct significant transport infrastructure to provide CEA service that concentrates the rural traffic of 200 LECs scattered all over Iowa at a single access tandem with equal access and advanced features and functions.[262] The costs that CenturyLink would have to incur to provide such CEA service would likely require CenturyLink to charge IXCs a rate for CEA service far higher than Aureon's tariff rate of $0.00576.[263] Accordingly, the prices charged rural rate payers would likely increase significantly if Aureon is forced to shut-down the CEA network due to CEA tariff rates well below its actual costs.

Therefore, the FCC should not apply the CLEC rate benchmark to CEA service, and if necessary, it should waive Sections 51.911(c) and 61.26 of the Commission's rules, as the

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[259] *See* AT&T Opposition at 27. [[**BEGIN CONFIDENTIAL**]] [redacted] [[**END CONFIDENTIAL**]] *Id.* (citing Habiak Rate Declaration ¶¶ 22-26). Moreover, like Sprint, AT&T selectively relies only on its own data without taking into account the many other IXCs using Aureon's network. AT&T is by far the largest carrier using the CEA network, and AT&T has established interconnections with all of Aureon's POIs. Most other IXCs connect at Aureon's tandem in Des Moines, and not at Aureon's POIs, and AT&T's use of the CEA network is not typical for smaller IXCs.

[260] Hilton Supplemental Declaration ¶ 4.

[261] *Id.* ¶ 3.

[262] *Id.* ¶¶ 3-4.

[263] *Id.*

CLEC rate benchmark is incompatible with rate of return, cost based regulation, and the rate ceiling already established by the $0.00819 default transitional rate. Waiver of Sections 51.911(c) and 61.26 would promote and protect the public interest by ensuring that rural consumers have access to affordable advanced telecommunications services through the preservation of a cost-efficient and financially-sustainable CEA network.

III. CONCLUSION

Aureon's CEA service originally was conceived to bring competitive long distance service to Iowa residents living in rural areas, as well as other advanced, modern services and technologies to those areas. Both the FCC and the IUB, in authorizing Aureon to provide CEA service, fully understood that concentrating long distance traffic at one central tandem so that it would be economically viable for AT&T's competitors to offer long distance service in rural areas would be more expensive in some cases than connecting to the subtending LECs through other means. Nonetheless, the FCC and the IUB determined that because CenturyLink's tandems could not serve all of the subtending LECs and would not offer rural subscribers a choice of long distance providers and other benefits, the tradeoff between the higher cost of CEA service and provision of long distance competitive choice and advanced services to rural areas on one hand, and the AT&T monopoly on the other, served the public interest.

The Commission should find that Aureon's current tariff rate of $0.00576 is just and reasonable. The Commission must enable Aureon to operate the CEA network not only in a sustainable manner to avoid disenfranchising significant portions of rural Iowa that rely on Aureon to connect to the national public switched telephone network, but also to earn sufficient revenues to continue to expand and improve its network and services so that rural areas will not fall victim to a digital and technology divide that will only serve to hasten the pace of population

migration from rural areas to urban areas.[264] To those ends, the FCC should permit Aureon to charge a CEA rate equal to or less than its default transitional rate of $0.00819. This would obviate the need for Aureon to conduct cost studies, and relieve the FCC from the burden of reviewing Aureon's tariff filings, and conducting protracted and complicated tariff investigation proceedings like the one currently before the Commission.

Further, regulating Aureon solely via its $0.00819 default transitional rate cap (like the Commission does all other LECs) will incentivize Aureon to use operational and cost efficiencies to reinvest in its fiber network not only to benefit rural areas, but also to reduce costs for Aureon's IXC customers. In the alternative, Aureon should be permitted to charge a cost-supported rate between the CLEC rate benchmark (as a floor) and the default transitional rate (as a ceiling). Aureon's cost studies and traffic projections demonstrate that Aureon's interdivision lease fully complies with the Commission's affiliate transaction rules and that the current CEA tariff rate of $0.00576 is just and reasonable. There is no purpose for Aureon to file cost studies if its rate is less than the CLEC rate benchmark because the FCC has already decided that CLEC tariff rates below the benchmark are automatically considered just and reasonable.[265]

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[264] *See Shifting Geography of Population Change*, USDA, https://www.ers.usda.gov/topics/rural-economy-population/population-migration/shifting-geography-of-population-change/ (last visited May 15, 2018) ("Population loss affected most nonmetro counties in the Great Plains from eastern Montana to west Texas, extending into Corn Belt areas of Iowa, Illinois, and parts of other Midwestern States."); John Cromartie, *Rural Areas Show Overall Population Decline and Shifting Regional Patterns of Population Change*, USDA (Sept. 5, 2017), https://www.ers.usda.gov/amber-waves/2017/september/rural-areas-show-overall-population-decline-and-shifting-regional-patterns-of-population-change/ (last viewed May 15, 2018).

[265] *CLEC Access Charge Reform Order*, 16 FCC Rcd. at 9939, ¶¶ 41-42.

Respectfully submitted,

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Dated: May 17, 2018

Exhibit E

Supplemental Declaration of Frank Hilton

Exhibit F

Supplemental Declaration of Brian Sullivan

Exhibit G

NECA Reporting Guideline 4.19

Guideline: 4.19 Categorization of Wideband and Special Access Services

Issue Date: 11/07 (Revised 12/08, 2/13)

Description

What methods are acceptable or not acceptable for categorizing wideband or special access COE and CWF facilities and allocating costs? The purpose of this NECA Reporting Guideline is to provide a summary of acceptable cost allocation methods when facilities are providing multiple Title II special and switched access transport services.

Exhibit 1 illustrates a typical network configuration to which these guidelines apply. These guidelines apply to allocation of costs that have been identified as wideband and special access trunk facilities.

Background

Part 36 Definitions of Wideband and Special Access:

> Wideband Definition: "A communication channel of a band width equivalent to twelve or more voice grade channels."
>
> Special Access (Private Line) Services Definition: "A service for communications between specified locations for a continuous period or for regularly recurring periods at stated hours."

Since wideband is defined as twelve or more voice grade channels in Part 36, wideband would normally include the facilities providing unchannelized DS-1 /DS-3 and broadband or video service.

Broadband is wideband. Broadband is a high-speed communication channel over a packet transmission facility. DSL and Ethernet are broadband examples.

ECs provide loop and trunk facilities which have the capability to carry voice grade as well as wideband or special access services. For example, a fiber facility could be utilized to provide broadband service and a voice grade business line to a school. When different categories of plant are being provided over the same facility, such as a fiber strand or a copper pair, the costs of that facility (fiber or copper) must be allocated among the various categories of service. The bandwidth of a fiber strand is limited only by the complexity and cost of the optical interfaces (circuit equipment). Therefore, a variety of services can be provided over one fiber which necessitates that costs be allocated among the various categories of services.

Following is the applicable Part 36 rules for treating CWF plant using analog or digital technology, copper or fiber plant.

FCC 36.151(c) discusses the separation of cable and wire facilities:

"In the separation of the cost of cable and wire facilities among the

Guideline: 4.19 Categorization of Wideband and Special Access Services

> operations, the first step is the assignment of the facilities to certain categories. The basic method of making this assignment is the identification of the facilities assignable to each category and the determination of the cost of the facilities so identified. Because of variations among companies in the character of the facilities and operating conditions, and in the accounting and engineering records maintained, the detailed methods followed, of necessity, will vary among the companies. The general principles to be followed, however, will be the same for all companies."

The rules are not specific relative to the allocation of mixed use services over common plant. FCC rules tend to address how costs are allocated between the various jurisdictions more clearly than how costs are allocated between categories of plant.

Analysis

There are a variety of methodologies in use among companies to identify wideband and special access costs. The FCC rules do not state a particular methodology for categorizing these facilities. However, as is generally the case, the cost allocation methodology should produce reasonable results and be cost causative. This categorization affects special access costs, USF costs per loop, common line costs and transport costs so it is very important that the methodologies be consistent and reasonable. The categorization of wideband and special access services over mixed use facilities should be treated the same for CWF & COE. However, CWF will include a mileage component that is not applicable to COE.

One method used in the past that some have questioned as a reasonable form of cost allocation is the "voice grade equivalent" method. In this method, facilities carrying both voice grade services and wideband or special access services are allocated to the categories by identifying the number of voice grade equivalents lines for each service. In this manner, a wideband or special access service such as a state distance learning circuit, although only providing one end to end service, is equated to multiple voice grade equivalent lines.

The fundamental issue with this methodology is that the allocation of plant between a wideband special access service and telephone service using voice grade equivalent is not representative of the actual costs associated with the service. The results of this methodology assign a significant portion of the costs being allocated to the wideband or special access service. For example, since the bandwidth required for broadband service is many times greater than for voice grade telephone, the cost of a facility with one broadband circuit and one voice grade telephone circuit could be allocated hundreds to one. It could be as much as 99% to broadband and less than 1% to telephone (see Exhibit A: Wideband Allocation Methodology Comparison).

Interstate Special Access services cannot support the costs assigned to interstate special access using this methodology, simply because it would not be reasonable for those rates to reflect such an extreme disparity in costs allocated between voice grade and special access services.

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Many companies use circuits or circuit terminations as an allocator. Using this "path/circuit" methodology, the cost of the same facility carrying one wideband or special access circuit and one voice grade telephone circuit would be allocated equally between the two services. Since there is not inherently correct "cost causative" allocation of costs, it may be argued that the path/circuit allocation is more reasonable (see Exhibit B: Circuit Method).

The Commission defines a loop as "a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises."[1] In addition, the Commission indicated in a universal service order that for loops served via concentrators, "count the actual number of customer lines served, not the transmission channels at the wire center."[2] This suggests that the Commission intends LECs to count the actual number of working subscriber loops or channels, not the voice grade capacity available. In addition, because loop plant is allocated to categories based on a count of voice grade or private line loops….it suggests that exchange and interexchange plant should follow the same logic by using a count of circuit terminations.

Still another method that may be argued as cost causative is referred to as the "system method" which allocates cost based on the utilization of the electronics on the fiber such as DS3s and DS1s. The advantage of this method is that it recognizes that there may be additional costs associated with higher capacity services. (See Exhibit C: System Method).

There are also companies who have performed special studies to identify cost characteristics of wideband and special access services and use these studies to 'weight' the costs of these services accordingly. Cost characteristic differences between Time-Division Multiplexing (TDM) and packet technology prohibit development of a meaningful factor to derive a weighted packet technology cost based on TDM costs. In addition, companies always have the option of trying to identify the actual costs of their own services and assign the costs to the appropriate categories based upon the costs specific to their own company.

Packet technology includes frame relay, Asynchronous Transfer Mode **(**ATM), Internet Protocol (IP), Multi-Protocol Label Switching (MPLS) and Ethernet which can be transported over Synchronous Optical Networking (SONET). Exhibits D and E are examples of allocation methods for packet technology costs with Ethernet and SONET transport.

Conclusion

Given the need for use of reasonable cost causative methodologies among companies participating in the NECA pools, the following represents examples of methodologies that are acceptable for assigning costs to CWF and COE for wideband and special access services where mixed use facilities are being used.

[1] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) at ¶ 380.

[2] Federal-State Joint Board on Universal Service Order, CC Docket No. 96-45, 12 FCC Rcd 9803 (1997) at ¶ 7.

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- Cost assignment based on a count of working circuits or circuit terminations (Example B: Circuit Method)
- Cost assignment based on electronic utilization or systems (Example C: System Method)
- Cost assignment for packet technology transported over Ethernet (Example D: Circuit Method)
- Cost assignment for packet technology transported over SONET (Example E: System Method)
- Cost assignment based on a weighting of similar technologies or services used over the facility resulting from an actual study of cost relationships between services
- Cost assignment based on actual costs

NECA will not accept cost studies where COE and CWF cost allocation of plant which includes both voice services and data services is done using a voice grade equivalent or related capacity equivalent methodology. A count of voice grade equivalents is not considered an acceptable method as it assigns costs to categories that do not reasonably reflect costs differentials.[3]

The above methodologies are not all-inclusive; NECA will consider other methodologies that produce reasonable cost causative results.

The Federal Communication Commission (FCC) has authorized NECA to interpret FCC Rules where necessary.[4] Pursuant to this authorization, NECA has published this Reporting Guideline Paper. Notwithstanding NECA's recommended interpretation, the FCC retains the full authority to review NECA's Reporting Guideline Papers. In the event of such review, the FCC's findings, if contrary to NECA's position, will take precedence.

[3] This methodology will not be accepted in cost studies after 2007 (effective with 2008 cost studies).

[4] *Safeguards to Improve the Interstate Access Tariff and Revenue Distribution Processes*, CC Docket 93-6, Report and Order to Show Cause, 10 FCC Rcd. 6243 (1995)

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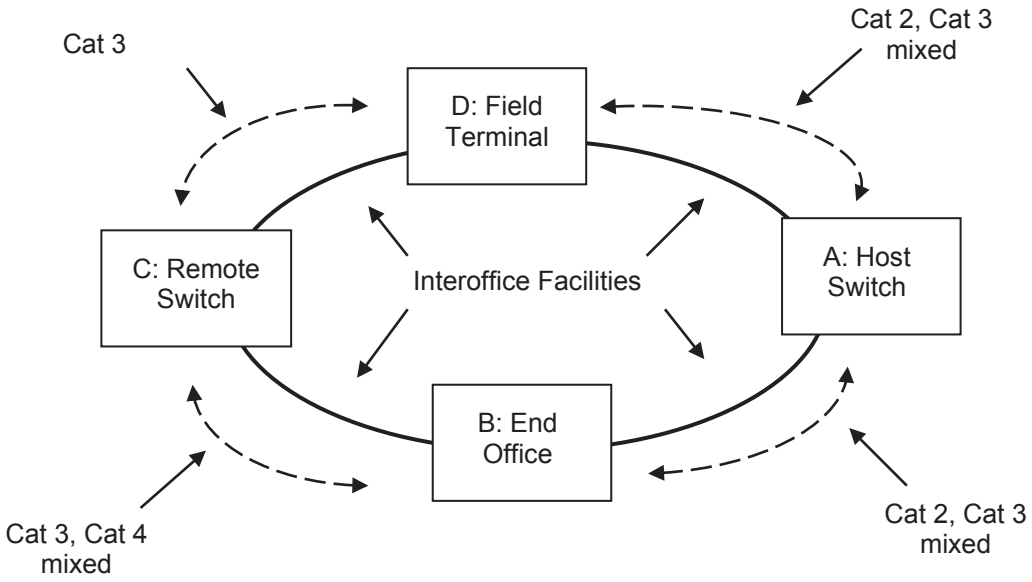
Exhibit 1 – Ring Network Carrying Mixed Category Traffic

The diagram below illustrates the sections of a typical network carrying multiple Title II services. Exhibits B-E below address cost allocation to the individual services carried in Exhibit 1 sections. For example Exhibit B shows a cost allocation method for:

- **Wideband interstate and intrastate carried in sections A-D, or A-B.**
- **Channelized interstate possibly carried in all sections.**
- **Exchange trunk message carried in A-D, or A-B.**
- **Toll trunk-message possibly carried in all sections.**

Exhibit 1



—— Multiple path transmission facility

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Exhibit A

Wideband Allocation Methodology Comparison

Host Switch A — End Office B / Field Terminal D

Trunk Facility

	Fiber	
OC3		OC3

Cable & Wire Distribution

System	* VG/Channel Equivalent	DS1 Equivalent	DS3 Equivalent
DSO	1		
DS1	24	1	
DS3	672	28	1
OC3	2016	84	3
OC12	8964	336	12

	Service	Circuit	% Alloc	DS1 Equiv	% Alloc	DSO Equiv	% Alloc	Category
6	DS3 wideband – interstate	6	2%	168	39%	4032	91%	Cat. 2
6	DS1 wideband – intrastate	6	2%	6	1%	144	3%	Cat. 2
5	DS1 PL channelized – interstate	120	43%	120	27%	120	2.7%	Cat. 3
6	DS1 Exch. Trunk – channelized-message	144	53%	144	33%	144	3.3%	Cat. 2
	Total Circuits	276	100%	438	100%	4,402	100%	

***A voice grade equivalent or related capacity method is not acceptable**

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Exhibit B

Circuit Method

Host Switch A	Trunk Facility	End Office B Field Terminal D
	Fiber	
OC3		OC3

Cable & Wire Distribution

Service	Circuit Count	Percent Allocation	Category
1 DS3 Wideband – interstate	1	.2%	Cat. 2
6 DS1 Wideband – intrastate	6	1%	Cat. 2
5 DS1 PL Channelized – interstate	120	29%	Cat. 3
6 DS1 Exch. Trunk – Message	144	35%	Cat. 2
6 DS1 Toll Trunk – Message	144	35%	Cat. 3
Total Circuit Trunks	415	100%	

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Exhibit C

System Method

Host Switch A	Trunk Facility	End Office B Field Terminal D
	Fiber	
OC3		OC3

Cable & Wire Distribution

	Circuit Count	Percent Allocation of Total	Service			Percent Allocation	Category
	1	50%	DS3	Wideband – interstate		50%	Cat.2
	1	50%	DS3				
			6	DS1 wideband - interstate	[(6/23)* .5]	11%	Cat.2
			5	DS1PL channelized–interstate	[(5/23)* .5]	13%	Cat 3
			6	DS1 Exch. Trunk	[(6/23)* .5]	13%	Cat.2
			6	DS1Toll trunk	[(6/23)* .5]	13%	Cat 3
			23				
Total	2	100%				100%	

Guideline: 4.19 Categorization of Wideband and Special Access Services

Exhibit D

Circuit Method

Host Switch A	Trunk Facility	End Office B Field Terminal D
	Ethernet*	

Cable and Wire Distribution

	Circuit Count	Percent Allocation of Total	Service			Percent Allocation	Category
	1	12.5%	100 Mbps - TDM				
			1	DS3 Wideband Interstate	[(1/24)*.125]	.52%	Cat. 2
			6	DS1 Wideband Intrastate	[(6/24)*.125]	3.13%	Cat. 2
			5	DS1 PL Channelized – Interstate	[(5/24)*.125]	2.60%	Cat. 3
			6	DS1 Exch Trunk	[(6/24)*.125]	3.13%	Cat. 2
			6	DS1 Toll Trunk	[(6/24)*.125]	3.13%	Cat. 3
			24				
	1	12.5%	1Gbps Aggregated DSL Transport		(1/8)	12.5%	Cat. 2
	3	37.5%	100 Mbps ETS EVC**		(3/8)	37.50%	Cat. 3
	1	12.5%	50 Mbps ETS EVC		(1/8)	12.50%	Cat. 2
	1	12.5%	100 Mbps ETS EVC		(1/8)	12.50%	Cat. 3
	1	12.5%	50 Mbps ETS EVC		(1/8)	12.50%	Cat. 2
Total	8	100%				100%	

* Intrastate and/or interstate services such as wireless backhaul special access and DSL transmission.
** Ethernet virtual connection (EVC) is the technical equivalent of a circuit.

Guideline: 4.19 Categorization of Wideband and Special Access Services

Exhibit E

System Method

Host Switch A	Trunk Facility	End Office B Field Terminal D
OC48	SONET	OC48

Cable and Wire Distribution

Circuit Count	Percent Allocation of Total	Service			Percent Allocation	Category
1	17%	OC3 -TDM				
		1	DS3 Wideband Interstate	[(1/24)*.17]	.69%	Cat. 2
		6	DS1 Wideband Intrastate	[(6/24)*.17]	4.17%	Cat. 2
		5	DS1 PL Channelized - Interstate	[(5/24)*.17]	3.47%	Cat. 3
		6	DS1 Exc. Trunk	[(6/24)*.17]	4.17%	Cat. 2
		6	DS1 Toll Trunk	[(6/24)*.17]	4.14%	Cat. 3
		24				
4	67%	OC3 - Aggregated- DSL Transport			66.67%	Cat. 3
1	17%	OC12 -Ethernet Transport Service (ETS)*				
		3	100 Mbps ETS EVC**	[(3/6)*.17)]	8.33%	Cat. 3
		1	50 Mbps ETS EVC	[(1/6)*.17)]	2.78%	Cat. 2
		1	100 Mbps ETS EVC	[(1/6)*.17)]	2.78%	Cat. 3
		1	50 Mbps ETS EVC	[(1/6)*.17)]	2.78%	Cat. 2
		6				
Total 6	100%				100%	

* Intrastate and/or interstate services such as wireless backhaul special access and DSL transmission.
** Ethernet virtual connection (EVC) is the technical equivalent of a circuit.

Exhibit H

CenturyLink Tariff F.C.C. No. 11
1st Revised Page 6-1

ACCESS SERVICE

6. SWITCHED ACCESS SERVICE

6.1 GENERAL

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a two-point electrical communications path between a customer's premises and an end user's premises. It provides for the use of terminating, switching, transport facilities and common subscriber plant of the Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer's premises, and to terminate calls from a customer's premises to an end user's premises in the LATA where it is provided. Specific references to material describing the elements of Switched Access Service are provided in 6.1.1, following.

Rates and charges for Switched Access Service not subject to Phase II Pricing Flexibility are set forth in 6.8, following. Phase II Pricing Flexibility rates are specified in Section 16. The wire centers included in Phases I and II Pricing Flexibility are identified in Section 23.

The application of rates for Switched Access Service is described in 6.7, following. Rates and charges for services other than Switched Access Service, e.g., a customer's interLATA toll message service, may also be applicable when Switched Access Service is used in conjunction with these other services. Descriptions of such applicability are provided in 6.2.1.A.8., 6.2.1.B.5., 6.2.2.A.7., 6.2.2.B.4., 6.2.3.A.7., 6.2.4.A.5., 6.2.5.A.8., 6.2.5.B.4., 6.2.6.A.1.g., 6.2.6.A.2.d., 6.2.6.B.1.g., 6.2.6.C.1.e., 6.7.8 and 6.7.10, following. Finally, a credit is applied against Lineside Switched Access Service charges as described in 6.7.9, following.

Exhibit I

Supplemental Declaration of Jeff Schill

REDACTED - FOR PUBLIC INSPECTION

CERTIFICATE OF SERVICE

I, Tony S. Lee, hereby certify that on this 17th day of May 2018, copies of the foregoing document were sent to the following:

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